

Pierce County Housing Authority

General Conditions of the Contract for Construction

Public Works Projects

This form is required for Public Works contracts awarded by Pierce County Housing Authority.

The form is used by Pierce County Housing Authority in solicitations to provide necessary contract clauses.

The information requested does not lend itself to confidentiality.

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General Conditions of the Contract for Construction

Public Works Projects

Conduct of Work

1. Definitions

- (a) **“Architect”** means the person or other entity engaged by the PCHA to perform architectural, engineering, design, and other services related to the work as provided for in the contract. When a PCHA/IHA uses an engineer to act in this capacity, the terms “architect” and “engineer” shall be synonymous. The Architect shall serve as a technical representative of the Contracting Officer. The Architect’s authority is as set forth elsewhere in this contract.
- (b) **“Contract”** means the contract entered into between the PCHA and the Contractor. It includes the forms of Bid, the Bid Bond, the Performance and Payment Bond or Bonds or other assurance of completion, the Certifications, Representations, and Other Statements of Bidders (form HUD-5369- A), these General Conditions of the Contract for Construction (form HUD-5370), the applicable wage rate determinations from Washington State Department of Labor and Industries, any special conditions included elsewhere in the contract, the specifications, and drawings. It includes all formal changes to any of those documents by addendum, change order, or other modification.
- (c) **“Contracting Officer”** means the person delegated the authority by the PCHA to enter into, administer, and/or terminate this contract and designated as such in writing to the Contractor. The term includes any successor Contracting Officer and any duly authorized representative of the Contracting Officer also designated in writing. The Contracting Officer shall be deemed the authorized agent of the PCHA in all dealings with the Contractor.

- (d) **“Contractor”** means the person or other entity entering into the contract with the PCHA to perform all of the work required under the contract.
- (e) **“Drawings”** means the drawings enumerated in the schedule of drawings contained in the Specifications and as described in the contract clause entitled **Specifications and Drawings for Construction** herein.
- (f) **“HUD”** means the United States of America acting through the Department of Housing and Urban Development including the Secretary, or any other person designated to act on its behalf. HUD has agreed, subject to the provisions of an Annual Contributions Contract (ACC), to provide financial assistance to the PCHA, which includes assistance in financing the work to be performed under this contract. As defined elsewhere in these General Conditions or the contract documents, the determination of HUD may be required to authorize changes in the work or for release of funds to the PCHA for payment to the Contractor. Notwithstanding HUD’s role, nothing in this contract shall be construed to create any contractual relationship between the Contractor and HUD.
- (g) **“Project”** means the entire project, whether construction or rehabilitation, the work for which is provided for in whole or in part under this contract.
- (h) **“PCHA”** means the Public Housing Agency organized under applicable state law, which is a party to this contract.
- (i) **“Specifications”** means the written description of the technical requirements for construction and includes the criteria and tests for determining whether the requirements are met.
- (j) **“Work”** means materials, workmanship, and manufacture and fabrication of components.

2. Contractor's Responsibility for Work

- (a) The Contractor shall furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the work. The Contractor shall also furnish all necessary water, heat, light, and power not made available to the Contractor by the PCHA pursuant to the clause entitled **Availability and Use of Utility Services** herein.
- (b) The Contractor shall perform on the site, and with its own organization, work equivalent to at least [75] of the total amount of work to be performed under the order. This percentage may be reduced by a supplemental agreement to this order if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the PCHA.
- (c) At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent

superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

- (d) The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall hold and save the PCHA, its officers and agents free and harmless from liability of any nature occasioned by the Contractor's performance. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.
- (e) The Contractor shall lay out the work from base lines and bench marks indicated on the drawings and be responsible for all lines, levels, and measurements of all work executed under the contract. The Contractor shall verify the figures before laying out the work and will be held responsible for any error resulting from its failure to do so.
- (f) The Contractor shall confine all operations (including storage of materials) on PCHA premises to areas authorized or approved by the Contracting Officer.
- (g) The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. After completing the work and before final inspection, the Contractor shall: (1) Remove from the premises all scaffolding, equipment, tools, and materials (including rejected materials) that are not the property of the PCHA and all rubbish caused by its work; (2) leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer; (3) perform all specified tests; and, (4) deliver the installation in complete and operating condition.
- (h) The Contractor's responsibility will terminate when all work has been completed, the final inspection made, and the work accepted by the Contracting Officer. The Contractor will then be released from further obligation except as required by the warranties specified elsewhere in the contract.

3. Architect's Duties, Responsibilities, and Authority

- (a) The Architect for this contract, and any successor, shall be designated in writing by the Contracting Officer.
- (b) The Architect shall serve as the Contracting Officer's technical representative with respect to architectural, engineering, and design matters related to the work performed under the contract. The Architect may provide direction on contract performance. Such direction shall be within the scope of the contract and may not be of a nature which:
 - (1) Institutes additional work outside the scope of the contract;
 - (2) Constitutes a change as defined in the **Changes** clause herein;
 - (3) Causes an increase or decrease in the cost of the contract;

- (4) Alters the Construction Progress Schedule; or
- (5) changes any of the other express terms or conditions of the contract.

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

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

4. Other Contracts

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

Construction Requirements

5. Pre-construction Conference and Notice to Proceed

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

6. Construction Progress Schedule

- (a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring labor, materials, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments or take other remedies under the contract until the Contractor submits the required schedule.
- (b) The Contractor shall enter the actual progress on the chart as required by the Contracting Officer, and immediately deliver three copies of the annotated schedule to the Contracting Officer. If the Contracting Officer determines, upon the basis of inspection conducted pursuant to the clause entitled ***Inspection and Acceptance of Construction***, herein that the Contractor is not meeting the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the PCHA. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.
- (c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the **Default** clause of this contract.

7. Site Investigation and Conditions Affecting the Work

- (a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to, (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection

of the site, including all exploratory work done by the PCHA, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the PCHA.

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

8. Differing Site Conditions

- (a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site(s), of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.
- (b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. Work shall not proceed at the affected site, except at the Contractor's risk, until the Contracting Officer has provided written instructions to the Contractor. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, the Contractor shall file a claim in writing to the PCHA within ten days after receipt of such instructions and, in any event, before proceeding with the work. An equitable adjustment in the contract price, the delivery schedule, or both shall be made under this clause and the contract modified in writing accordingly.
- (c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.
- (d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

9. Specifications and Drawings for Construction

- (a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.
- (b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "pre-scribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by", or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.
- (c) Where "as shown", "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place", that is "furnished and installed".
- (d) "Shop drawings" means drawings, submitted to the PCHA by the Contractor, subcontractor, or any lower tier subcontractor, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The PCHA may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.
- (e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with other contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the PCHA's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

- (f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Architect approves any such variation and the Contracting Officer concurs, the Contracting Officer shall issue an appropriate modification to the contract, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.
- (g) It shall be the responsibility of the Contractor to make timely requests of the PCHA for such large scale and full size drawings, color schemes, and other additional information, not already in his possession, which shall be required in the planning and production of the work. Such requests may be submitted as the need arises, but each such request shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay.
- (h) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the PCHA and one set will be returned to the Contractor. As required by the Contracting Officer, the Contractor, upon completing the work under this contract, shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the work is completed and accepted.
- (i) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all shop drawings prepared by subcontractors are submitted to the Contracting Officer.

10. As-Built Drawings

- (a) "As-built drawings," as used in this clause, means drawings submitted by the Contractor or subcontractor at any tier to show the construction of a particular structure or work as actually completed under the contract. "As-built drawings" shall be synonymous with "Record drawings."
- (b) As required by the Contracting Officer, the Contractor shall provide the Contracting Officer accurate information to be used in the preparation of permanent as-built drawings. For this purpose, the Contractor shall record on one set of contract drawings all changes from the installations originally indicated, and record final locations of underground lines by depth from finish grade and by accurate horizontal offset distances to permanent surface improvements such as buildings, curbs, or edges of walks.
- (c) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all as-built drawings prepared by subcontractors are submitted to the Contracting Officer.

11. Material and Workmanship

- (a) All equipment, material, and articles furnished under this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the contract to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of, and as approved by the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.
- (b) Approval of equipment and materials.
- (1) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles, which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.
 - (2) When required by the specifications or the Contracting Officer, the Contractor shall submit appropriately marked samples (and certificates related to them) for approval at the Contractor's expense, with all shipping charges pre-paid. The Contractor shall label, or otherwise properly mark on the container, the material or product represented, its place of origin, the name of the producer, the Contractor's name, and the identification of the construction project for which the material or product is intended to be used.
 - (3) Certificates shall be submitted in triplicate, describing each sample submitted for approval and certifying that the material, equipment or accessory complies with contract requirements. The certificates shall include the name and brand of the product, name of manufacturer, and the location where produced.
 - (4) Approval of a sample shall not constitute a waiver of the PCHA right to demand full compliance with contract requirements. Materials, equipment and accessories may be rejected for cause even though samples have been approved.
 - (5) Wherever materials are required to comply with recognized standards or specifications, such specifications shall be accepted as establishing the technical qualities and testing methods, but

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

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

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

12. Permits and Codes

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

(b) The Contractor shall secure and pay for all licenses and Permits necessary for the proper execution and completion of the work.

13. Health, Safety, and Accident Prevention

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

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

(2) Protect the lives, health, and safety of other persons;

(3) Prevent damage to property, materials, supplies, and equipment; and,

(4) Avoid work interruptions.

(b) For these purposes, the Contractor shall:

(1) Comply with regulations and standards issued by the Secretary of Labor at 29 CFR Part 1926. Failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96), 40 U.S.C. 327 et seq.; and,

(2) Include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.

(c) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 CFR Part 1904.

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

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

14. Temporary Heating

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

15. Availability and Use of Utility Services

- (a) The PCHA shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the PCHA or, where the utility is produced by the PCHA, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.
- (b) The Contractor, at its expense and in a manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the PCHA/IHA, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

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

- (a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed under this contract, and which do not unreasonably interfere with the work required under this contract.
- (b) The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance of this contract, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.
- (c) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. Prior to disturbing the ground at the construction site, the Contractor shall ensure that all underground utility lines are clearly marked.
- (d) The Contractor shall shore up, brace, underpin, secure, and protect as necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected by the excavations or other operations connected with the construction of the project.
- (e) Any equipment temporarily removed as a result of work under this contract shall be protected, cleaned, and replaced in the same condition as at the time of award of this contract.
- (f) New work which connects to existing work shall correspond in all respects with that to which it connects and/or be similar to existing work unless otherwise required by the specifications.
- (g) No structural members shall be altered or in any way weakened without the written authorization of the Contracting Officer, unless such work is clearly specified in the plans or specifications.

- (h) If the removal of the existing work exposes discolored or unfinished surfaces, or work out of alignment, such surfaces shall be refinished, or the material replaced as necessary to make the continuous work uniform and harmonious. This, however, shall not be construed to require the refinishing or reconstruction of dissimilar finishes previously exposed, or finished surfaces in good condition, but in different planes or on different levels when brought together by the removal of intervening work, unless such refinishing or reconstruction is specified in the plans or specifications.
- (i) The Contractor shall give all required notices to any adjoining or adjacent property owner or other party before the commencement of any work.
- (j) The Contractor shall indemnify and save harmless the PCHA from any damages on account of settlement or the loss of lateral support of adjoining property, any damages from changes in topography affecting drainage, and from all loss or expense and all damages for which the PCHA may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.
- (k) The Contractor shall repair any damage to vegetation, structures, equipment, utilities, or improvements, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

17. Temporary Buildings and Transportation of Materials

- (a) Temporary buildings (e.g., storage sheds, shops, offices, sanitary facilities) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the PCHA. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.
- (b) The Contractor shall, as directed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

18. Clean Air and Water (Applicable to Contracts in Excess of \$100,000)

- (a) Definition. "Facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by the Contractor or any subcontractor, used in the performance of the contract or any subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the Environmental Protection Agency (EPA) determines that independent facilities are collocated in one geographical area.
- (b) In compliance with regulations issued by the United States Environmental Protection Agency (EPA), 40 CFR Part 15, pursuant to the Clean Air Act, as amended ("Air Act"), 42 U.S.C. 7401, et seq., the Federal Water Pollution Control Act, as amended ("Water Act"), 33 U.S.C. 1251, et seq., and Executive Order 11738, the Contractor agrees to —
- (1) Not utilize any facility in the performance of this contract or any subcontract which is listed on the EPA List of Violating Facilities pursuant to Part 15 of the regulations for the duration of time that the facility remains on the list;
 - (2) Promptly notify the Contracting Officer if a facility the Contractor intends to use in the performance of this contract is on the EPA List of Violating Facilities or the Contractor knows that it has been recommended to be placed on the List;
 - (3) Comply with all requirements of the Air Act and the Water Act, including the requirements of Section 114 of the Air Act and Section 308 of the Water Act, and all applicable clean air and clean water standards; and,
 - (4) Include or cause to be included the provisions of this clause in every subcontract, and take such action as HUD may direct as a means of enforcing such provisions.

19. Energy Efficiency

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

20. Inspection and Acceptance of Construction

(a) Definitions. As used in this clause —

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

- (2) **“Inspection”** means examining and testing the work performed under the contract (including, when appropriate, raw materials, equipment, components, and intermediate assemblies) to determine whether it conforms to contract requirements.
- (3) **“Testing”** means that element of inspection that determines the properties or elements, including functional operation of materials, equipment, or their components, by the application of established scientific principles and procedures.
- (b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. All work is subject to PCHA inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.
- (c) PCHA inspections and tests are for the sole benefit of the PCHA and do not:
- (1) relieve the Contractor of responsibility for providing adequate quality control measures;
 - (2) relieve the Contractor of responsibility for loss or damage of the material before acceptance;
 - (3) constitute or imply acceptance; or,
 - (4) affect the continuing rights of the PCHA after acceptance of the completed work under paragraph (j) below.
- (d) The presence or absence of the PCHA inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specifications without the Contracting Officer’s written authorization. All instructions and approvals with respect to the work shall be given to the Contractor by the Contracting Officer.
- (e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The PCHA may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes re-inspection or retest necessary. The PCHA shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.
- (f) The PCHA may conduct routine inspections of the construction site on a daily basis.
- (g) The Contractor shall, without charge, replace or correct work found by the PCHA/IHA not to conform to contract requirements, unless the PCHA decides that it is in its interest to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

- (h) If the Contractor does not promptly replace or correct rejected work, the PCHA may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor, or (2) terminate for default the Contractor's right to proceed.
- (i) If any work requiring inspection is covered up without approval of the PCHA, it must, if requested by the Contracting Officer, be uncovered at the expense of the Contractor. If at any time before final acceptance of the entire work, the PCHA considers it necessary or advisable, to examine work already completed by removing or tearing it out, the Contractor, shall on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray all the expenses of the examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the Contracting Officer shall make an equitable adjustment to cover the cost of the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- (j) The Contractor shall notify the Contracting Officer, in writing, as to the date when in its opinion all or a designated portion of the work will be substantially completed and ready for inspection. If the Architect determines that the state of preparedness is as represented, the PCHA will promptly arrange for the inspection. Unless otherwise specified in the contract, the PCHA shall accept, as soon as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines and designates can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the PCHA's right under any warranty or guarantee.

21. Use and Possession Prior to Completion

- (a) The PCHA shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the PCHA/IHA intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The PCHA's possession or use shall not be deemed an acceptance of any work under the contract.
- (b) While the PCHA has such possession or use, the Contractor shall be relieved of the responsibility for:
 - (1) the loss of or damage to the work resulting from the PCHA's possession or use, notwithstanding the terms of the clause entitled **Permits and Codes** herein;
 - (2) all maintenance costs on the areas occupied; and,
 - (3) furnishing heat, light, power, and water used in the areas occupied without proper remuneration therefor.If prior possession or use by the PCHA delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

22. Warranty of Title

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

23. Warranty of Construction

- (a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any subcontractor or supplier at any tier. This warranty shall continue for a period of N/A from the date of final acceptance of the work. If the PCHA takes possession of any part of the work before final acceptance, this warranty shall continue for a period of N/A from the date that the PCHA takes possession.
- (b) The Contractor shall remedy, at the Contractor's expense, any failure to conform, or any defect. In addition, the Contractor shall remedy, at the Contractor's expense, any damage to PCHA-owned or controlled real or personal property when the damage is the result of—
- (1) The Contractor's failure to conform to contract requirements; or
 - (2) Any defects of equipment, material, workmanship or design furnished by the Contractor.
- (c) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for N/A from the date of repair or replacement.
- (d) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect or damage.
- (e) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the PCHA shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- (f) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall:
- (1) Obtain all warranties that would be given in normal commercial practice.
 - (2) Require all warranties to be executed in writing, for the benefit of the PCHA; and,

(3) Enforce all warranties for the benefit of the PCHA.

- (g) In the event the Contractor's warranty under paragraph (a) of this clause has expired, the PCHA may bring suit at its own expense to enforce a subcontractor, manufacturer's or supplier's warranty.
- (h) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defect of material or design furnished by the PCHA nor for the repair of any damage that results from any defect in PCHA furnished material or design.
- (i) Notwithstanding any provisions herein to the contrary, the establishment of the time periods in paragraphs (a) and (c) above relate only to the specific obligation of the Contractor to correct the work, and have no relationship to the time within which its obligation to comply with the contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligation other than specifically to correct the work.
- (j) This warranty shall not limit the PCHA's rights under the **Inspection and Acceptance of Construction** clause of this contract with respect to latent defects, gross mistakes or fraud.

24. Prohibition Against Liens

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

Administrative Requirements

25. Contract Period

The Contractor shall complete all work required under this contract within **Per Schedule** calendar days of the effective date of the contract, or within the time schedule established in the notice to proceed issued by the Contracting Officer.

26. Order of Precedence

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

27. Payments

- (a) The PCHA shall pay the Contractor the price as provided in this contract.
- (b) The PCHA shall make progress payments approximately every 30 days as the work proceeds, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. The PCHA/IHA may, subject to written determination and approval of the Contracting Officer, make more frequent payments to contractors, which are qualified small businesses.
- (c) Before the first progress payment under this contract, the Contractor shall furnish, in such detail as requested by the Contracting Officer, a breakdown of the total contract price showing the amount included therein for each principal category of the work, which shall substantiate the payment amount requested in order to provide a basis for determining progress payments. The breakdown shall be approved by the Contracting Officer and must be acceptable to HUD. If the contract covers more than one project, the Contractor shall furnish a separate breakdown for each. The values and quantities employed in making up this breakdown are for determining the amount of progress payments and shall not be construed as a basis for additions to or deductions from the contract price. The Contractor shall prorate its overhead and profit over the construction period of the contract.
- (d) The Contractor shall submit periodic estimates showing the value of the work performed during each period based upon the approved break-down of the contract price. Such estimates shall be submitted not later than 30 days in advance of the date set for payment and are subject to correction and revision as required. The estimates must be approved by the Contracting Officer with the concurrence of the Architect prior to payment. If the contract covers more than one project, the Contractor shall furnish a separate progress payment estimate for each.
- (e) Along with each request for progress payments and the required estimates, the Contractor shall furnish the following certification, or payment shall not be made:

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

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

Name:

Title:

Date:

- (f) Except as otherwise provided in State law, the PCHA shall retain five (5) percent of the amount of progress payments until completion and acceptance of all work under the contract; except, that if upon completion of 50 percent of the work, the Contracting Officer, after consulting with the Architect, determines that the Contractor's performance and progress are satisfactory, the PCHA may make the remaining payments in full for the work subsequently completed. If the Contracting Officer subsequently determines that the Contractor's performance and progress are unsatisfactory, the PCHA shall reinstate the five (5) percent (or other percentage as provided in State law) retainage until such time as the Contracting Officer determines that performance and progress are satisfactory.
- (g) The Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration when computing progress payments. Material delivered to the Contractor at locations other than the site may also be taken into consideration if the Contractor furnishes satisfactory evidence that (1) it has acquired title to such material; (2) the material is properly stored in a bonded warehouse, storage yard, or similar suitable place as may be approved by the Contracting Officer; (3) the material is insured to cover its full value; and (4) the material will be used to perform this contract. Before any progress payment that includes delivered material is made, the Contractor shall furnish such documentation as the Contracting Officer may require to assure the protection of the PCHA's interest in such materials. The Contractor shall remain responsible for such stored material notwithstanding the transfer of title to the PCHA.
- (h) All material and work covered by progress payments made shall, at the time of payment become the sole property of the PCHA, but this shall not be construed as (1) relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or, (2) waiving the right of the PCHA to require the fulfillment of all of the terms of the contract. In the event the work of the Contractor has been damaged by other contractors or persons other than employees of the PCHA in the course of their employment, the Contractor shall restore such damaged work without cost to the PCHA and to seek redress for its damage only from those who directly caused it.
- (i) The PCHA shall make the final payment due the Contractor under this contract after (1) completion and final acceptance of all work; and (2) presentation of release of all claims against the PCHA arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. Each such exception shall embrace no more than one claim, the basis and scope of which shall be clearly defined. The amounts for such excepted claims shall not be included in the request for final payment. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned.
- (j) Prior to making any payment, the Contracting Officer may require the Contractor to furnish receipts or other evidence of payment from all persons performing work and supplying material to the Contractor, if the Contracting Officer determines such evidence is necessary to substantiate claimed costs.

- (k) The PCHA shall not (1) determine or adjust any claims for payment or disputes arising thereunder between the Contractor and its subcontractors or material suppliers; or, (2) with-hold any moneys for the protection of the subcontractors or material suppliers. The failure or refusal of the PCHA to withhold moneys from the Contractor shall in nowise impair the obligations of any surety or sureties under any bonds furnished under this contract.

28. Contract Modifications

- (a) Only the Contracting Officer has authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing.
- (b) The Contracting Officer may modify the contract unilaterally (1) pursuant to a specific authorization stated in a contract clause (e.g., Changes); or (2) for administrative matters, which do not change the rights or responsibilities of the parties (e.g., change in the PCHA address). All other contract modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer.
- (c) When a proposed modification requires the approval of HUD prior to its issuance (e.g., a change order that exceeds the PCHA's approved threshold), such modification shall not be effective until the required approval is received by the PCHA.

29. Changes

- (a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract including changes:
- (1) In the specifications (including drawings and designs);
 - (2) In the method or manner of performance of the work;
 - (3) PCHA-furnished facilities, equipment, materials, services, or site; or,
 - (4) Directing the acceleration in the performance of the work.
- (b) Any other written order or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances and source of the order and (2) that the Contractor regards the order as a change order.

- (c) Except as provided in this clause, no order, statement or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.
- (d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for a adjustment based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days (5 days for oral orders) before the Contractor gives written notice as required. In the case of defective specifications for which the PCHA is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.
- (e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause, or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting a written statement describing the general nature and the amount of the proposal. If the facts justify it, the Contracting Officer may extend the period for submission. The proposal may be included in the notice required under paragraph (b) above. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.
- (f) The Contractor's written proposal for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following details:
- (1) Direct Costs. Materials (list individual items, the quantity and unit cost of each, and the aggregate cost); Transportation and delivery costs associated with materials; Labor breakdowns by hours or unit costs (identified with specific work to be performed); Construction equipment exclusively necessary for the change; Costs of preparation and/ or revision to shop drawings resulting from the change; Worker's Compensation and Public Liability Insurance; Employment taxes under FICA and FUTA; and, Bond Costs - when size of change warrants revision.
 - (2) Indirect Costs. Indirect costs may include overhead, general and administrative expenses, and not normally treated as direct costs. Fringe benefits
 - (3) Profit. The amount of profit shall be negotiated and may vary according to the nature, extent, and complexity of the work required by the change. The allowability of the direct and indirect costs shall be determined in accordance with the Contract Cost Principles and Procedures for Commercial Firms in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31), as implemented by HUD Handbook 2210.18, in effect on the date of this contract. The Contractor shall not be allowed a profit on the profit received by any subcontractor. Equitable adjustments for deleted work shall include a credit for profit and may include a credit for indirect costs. On proposals covering both

increases and decreases in the amount of the contract, the application of indirect costs and profit shall be on the net-change in direct costs for the Contractor or subcontractor performing the work.

- (g) The Contractor shall include in the proposal its request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the contract in its entirety.
- (h) The Contracting Officer shall act on proposals within 30 days after their receipt, or notify the Contractor of the date when such action will be taken.
- (i) Failure to reach an agreement on any proposal shall be a dispute under the clause entitled **Disputes** herein. Nothing in this clause, however, shall excuse the Contractor from proceeding with the contract as changed.
- (j) Except in an emergency endangering life or property, no change shall be made by the Contractor without a prior order from the Contracting Officer.

30. Suspension of Work

- (a) The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the PCHA.
- (b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified (or within a reasonable time if not specified) in this contract an adjustment shall be made for any increase in the cost of performance of the contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or for which any equitable adjustment is provided for or excluded under any other provision of this contract.
- (c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and, (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

31. Disputes

- (a) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under the contract, unlike a claim relating to the contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by complying with the requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- (b) Except for disputes arising under the clauses entitled ***Labor Standards and Labor Standards- No-routine Maintenance***, herein, all disputes arising under or relating to this contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.
- (c) All claims by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the PCHA against the Contractor shall be subject to a written decision by the Contracting Officer.
- (d) The Contracting Officer shall, within **60** (unless otherwise indicated) days after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made.
- (e) The Contracting Officer's decision shall be final unless the Contractor (1) appeals in writing to a higher level in the PCHA in accordance with the PCHA's policy and procedures, (2) refers the appeal to an independent mediator or arbitrator, or (3) files suit in a court of competent jurisdiction. Such appeal must be made within **30** (unless otherwise indicated) days after receipt of the Contracting Officer's decision.
- (f) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

32. Default

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

Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the PCHA in completing the work.

- (b) The Contractor's right to proceed shall not be terminated or the Contractor charged with damages under this clause if—
- (1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God, or of the public enemy, (ii) acts of the PCHA or other governmental entity in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the PCHA, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and
 - (2) The Contractor, within **10** days (10 days unless otherwise indicated) from the beginning of such delay (unless extended by the Contracting Officer) notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, time for completing the work shall be extended by written modification to the contract. The findings of the Contracting Officer shall be reduced to a written decision, which shall be subject to the provisions of the ***Disputes*** clause of this contract.
- (c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been for convenience of the PCHA.

33. Liquidated Damages

- (a) If the Contractor fails to complete the work within the time specified in the contract, or any extension, as specified in the clause entitled ***Default*** of this contract, the Contractor shall pay to the PCHA as liquidated damages, the sum of **\$250.00** for each calendar day of delay. If different completion dates are specified in the contract for separate parts or stages of the work, the amount of liquidated damages shall be assessed on those parts or stages which are delayed. To the extent that the Contractor's delay or non-performance is excused under another clause in this contract, liquidated damages shall not be due the PCHA. The Contractor remains liable for damages caused other than by delay.
- (b) If the PCHA terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the PCHA in completing the work.

- (c) If the PCHA does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

34. Termination for Convenience

- (a) The Contracting Officer may terminate this contract in whole, or in part, whenever the Contracting Officer determines that such termination is in the best interest of the PCHA. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which the performance of the work under the contract is terminated, and the date upon which such termination becomes effective.
- (b) If the performance of the work is terminated, either in whole or in part, the PCHA shall be liable to the Contractor for reasonable and proper costs resulting from such termination upon the receipt by the PCHA of a properly presented claim setting out in detail:
- (1) the total cost of the work performed to date of termination less the total amount of contract payments made to the Contractor;
 - (2) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, payment for which has not been made by the PCHA to the Contractor or by the Contractor to the subcontractor or supplier;
 - (3) the cost of preserving and protecting the work already performed until the PCHA or assignee takes possession thereof or assumes responsibility therefor;
 - (4) the actual or estimated cost of legal and accounting services reasonably necessary to prepare and present the termination claim to the PCHA; and
 - (5) an amount constituting a reasonable profit on the value of the work performed by the Contractor.
- (c) The Contracting Officer will act on the Contractor's claim within 60 days (60 days unless otherwise indicated) of receipt of the Contractor's claim.
- (d) Any disputes with regard to this clause are expressly made subject to the provisions of the *Disputes* clause of this contract.

35. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the PCHA under the contract may be assigned to a bank, trust company, or other financial institution. Such assignments of claims shall only be made with the written concurrence of the

Contracting Officer. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership as approved by the Contracting Officer.

36. Insurance

- (a) Before commencing work, the Contractor and each subcontractor shall furnish the PCHA/IHA with certificates of insurance showing the following insurance is in force and will insure all operations under the Contract:
- (1) Workers' Compensation, in accordance with state or Territorial Workers' Compensation laws.
 - (2) Commercial General Liability with a combined single limit for bodily injury and property damage of not less than **\$1,000,000.00** per occurrence to protect the Contractor and each subcontractor against claims for bodily injury or death and damage to the property of others. This shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under (3) below. If the Contractor has a "claims-made" policy, then the following additional requirements apply: the policy must provide a "retroactive date" which must be on or before the execution date of the Contract; and the extended reporting period may not be less than five years following the completion date of the Contract.
 - (3) Automobile Liability on owned and non-owned motor vehicles used on the site(s) or in connection therewith for a combined single limit for bodily injury and property damage of not less than **\$500,000.00** per occurrence.
- (c) Before commencing work, the Contractor shall furnish the PCHA with a certificate of insurance evidencing that Builder's Risk (fire and extended coverage) Insurance on all work in place and/or materials stored at the building site(s), including foundations and building equipment, is in force. The Builder's Risk Insurance shall be for the benefit of the Contractor and the PCHA as their interests may appear and each shall be named in the policy or policies as an insured. The Contractor in installing equipment supplied by the PCHA shall carry insurance on such equipment from the time the Contractor takes possession thereof until the Contract work is accepted by the PCHA. The Builder's Risk Insurance need not be carried on excavations, piers, footings, or foundations until such time as work on the super-structure is started. It need not be carried on landscape work. Policies shall furnish coverage at all times for the full cash value of all completed construction, as well as materials in place and/or stored at the site(s), whether or not partial payment has been made by the PCHA. The Contractor may terminate this insurance on buildings as of the date taken over for occupancy by the PCHA. The Contractor is not required to carry Builder's Risk Insurance for modernization work which does not involve structural alterations or additions and where the PCHA's existing fire and extended coverage policy can be endorsed to include such work.
- (d) All insurance shall be carried with companies, which are financially responsible and admitted to do business in the State in which the project is located. If any such insurance is due to expire during the

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

37. Subcontracts

(a) Definitions. As used in this contract :

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

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

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

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

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

(e) Nothing contained in this contract shall create any contractual relationship between any subcontractor and the PCHA or between the subcontractor and HUD.

38. Subcontracting with Small and Minority Firms, Women's Business Enterprise, and Labor Surplus Area Firms

The Contractor shall take the following steps to ensure that, whenever possible, subcontracts are awarded to small business firms, minority firms, women's business enterprises, and labor surplus area firms:

(a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

- (b) Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- (d) Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by small and minority businesses and women's business enterprises; and
- (e) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies.

39. Equal Employment Opportunity

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

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or handicap.
- (b) The Contractor 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.
- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, 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, color, religion, sex, national origin, or handicap.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or Federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor or as otherwise provided by law.
- (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.
- (j) Compliance with the requirements of this clause shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian self-determination and Education Assistance Act and the *Indian Preference* clause of this contract.

40. Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.

- (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. 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.
- (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 contractors 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.
- (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 contractors 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.

41. Indian Preference Applicable to contracts awarded by Indian Housing Authorities for projects owned or controlled by Indian Housing Authorities.

- (a.) The work to be performed under this contract is not on a project subject to section 7(b) of the Indian self-determination and Education Assistance Act (25 U.S.C. 450e(b)).

42. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

43. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the PCHA, no member of the governing body of the locality in which the project is situated, no member of the governing body of the locality in which the PCHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

44. Limitations on Payments made to influence Certain Federal Financial Transactions

- (a) The Contractor agrees to comply with Section 1352 of title 31, United States Code which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) The Contractor further agrees to comply with the requirement of the Act to furnish a disclosure (OMB Standard Form LLL, Disclosure of Lobbying Activities) if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.
- (c) Indian tribes (except those chartered by States) and Indian organizations as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) are exempt from the requirements of this clause.

45. Royalties and Patents

The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall save the PCHA harmless from loss on account thereof; except that the PCHA shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified and the Contractor has no reason to believe that the specified design, process, or product is an infringement. If, however, the Contractor has reason to believe that any design, process or product specified is an infringement of a patent, the Contractor shall promptly notify the Contracting Officer. Failure to give such notice shall make the Contractor responsible for resultant loss.

46. Examination and Retention of Contractor's Records

- (b) The PCHA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.
- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "**Subcontract**," as used in this clause, excludes purchase orders not exceeding \$10,000. (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to (1) appeals under the **Disputes** clause of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the PCHA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

47. Labor Standards – The Washington State Public Works Act

(A) The Law

Enacted in 1945, the Washington State Public Works Act, also known as the "prevailing wage law", is a worker protection act. It requires that workers be paid prevailing wages when employed on public works projects, and on public building service maintenance contracts.

(B) Purpose

The Public Works Act is modeled after the federal Davis-Bacon Act which was enacted to protect the employees of contractors performing public works construction from substandard earnings, and to preserve local wage standards. The employees, not the contractor or its assignee, are the beneficiaries of the Act. It is remedial and should be liberally construed. In other words, the Washington State Department of Labor and Industries (department) is directed to apply the law in ways that carry out its intent, which is to protect workers.

(C) Application

The Public Works Act regulates wages paid to workers, laborers and mechanics performing public work. It does not apply to work that is clerical, executive, administrative or professional in nature. For example, the Act does not apply to the work of a secretary, engineer or administrator, unless they are performing construction work, alteration work, repair work, etc. Prevailing Wage application depends on the work that is performed, regardless of the worker's job title. Any doubts or questions regarding the applicability of the prevailing wage law should be directed to the Prevailing Wage Office.

(D) Public Work

(a) Defined

Public work is all work, construction, alteration, repair or improvement that is executed at the cost of the state or any other local public agency. This includes, but is not limited to, demolition, remodeling, renovation, road construction, building construction, ferry construction and utilities construction.

(b) Public Building Service Maintenance Contracts

Prevailing wages are also required on all public building service maintenance (janitorial) contracts.

(c) Offsite Prefabrication

The offsite fabrication of nonstandard items specifically for a public works project is also considered to be public work for which prevailing wages are required. Examples of this include, but are not limited to, fabrication of ducts for heating, ventilation, and air conditioning systems, certain concrete tunnel liners and certain steel prefabrication.

(d) Maintenance

Prevailing wages are also required to be paid on all maintenance performed by contract.

(e) Material Suppliers

The production and delivery of sand, gravel, crushed rock, concrete, asphalt and other similar materials would require the payment of prevailing wage rates when that work is executed under a public works contract.

(f) Turnkey Projects (Lessee/Lessor relationships between public and private parties)

Prevailing wages must be paid for any work, construction, alteration, repair or improvement, other than ordinary maintenance, that the state or a municipality causes to be performed by a private party through a contract to rent, lease, or purchase at least fifty percent of the project by one or more state agencies or municipalities.

(E) Prevailing Wage

(a) Defined

Prevailing Wage is the hourly wage, usual benefits and overtime, paid in the largest city in each county, to the majority of workers, laborers, and mechanics. Prevailing wages are established, by the Department of Labor and Industries, for each trade and occupation employed in the performance of public work. They are established separately for each county, and are reflective of local wage conditions.

(b) Survey Methodology

The Industrial Statistician determines all prevailing wage rates. Surveys are conducted in which employers and labor unions are invited to submit wage and hour data to the Industrial Statistician. If the majority of workers in a trade or occupation, in the largest city in a county, are paid at the same wage rate, that wage becomes the prevailing wage. If not, an average wage is calculated.

(c) Fringe Benefits and Overtime

The prevailing rate of wage also includes usual benefits. Usual benefits include medical insurance, pensions, apprenticeship training programs, and vacation and holiday pay. Deductions from workers' paychecks are not usual benefits. Usual benefits are employer-paid. Benefits that are required by law (industrial insurance, social security, etc.) do not qualify as usual benefits. Employers must pay a wage and usual benefit package that adds up to the prevailing rate of wage. If an employer does not provide usual fringe benefits, then the total prevailing wage rate must be paid as an hourly wage. Special overtime rates are also established for each trade and occupation.

(F) Intents and Affidavits

(a) Requirement

Public works contracts require that each and every employer on the project file the Statement of Intent to Pay Prevailing Wages (Intent), and Affidavit of Wages Paid (Affidavit) forms. The forms are filed with the department and, once they are approved, are submitted by the employer to the agency administering the

contract. There is no lower dollar limit. That is, Intent and Affidavit forms are required for every public works contract regardless of the size of the contract.

(b) Intents

The Intent form is filed immediately after the contract is awarded and before work begins, if that is possible. The agency administering the contract may not make any payments until contractors have submitted an Intent form that has been approved by the Industrial Statistician.

(c) Affidavits

The Affidavit form is not filed until after all the work is completed. The agency administering the contract may not release final retainage until all contractors have submitted an Affidavit form that has been certified by the Industrial Statistician.

(c) Alternate Method for Contracts \$2500 or Less

An alternate method is available to public agencies that involves the processing of the forms by that agency, rather than by the Industrial Statistician. This method applies only to projects with a total cost of less than \$2500, and makes the public agency directly liable to workers for any unpaid prevailing wages. More information regarding this method may be obtained by contacting the Prevailing Wage Office.

(G) Rights of Workers

(a) Background

The Public Works Act is a worker protection law where the worker, not the employer, is the beneficiary. It provides for minimum wage rates that must be paid to workers on public works construction projects, so that any incentives to reduce wages to benefit the employer are removed.

(b) Posting

Intent forms listing the labor classifications and wages used on the project are required to be posted for the employees' inspection at the job site, for projects over \$10,000. On road construction, sewer line, pipeline, transmission line, street or alley improvement projects, the employer may post this form at the nearest local office, gravel crushing, concrete or asphalt batch plant, as long as the employer provides a copy of the Intent form to the employee upon request. In the event that the Intent form has not been approved by the department before work begins, the complete listing of prevailing wage rates for that county may be posted and distributed in lieu of the approved Intent form.

(c) Check Stubs

Washington employment law requires the employer to provide, with each employee's paycheck, an itemized statement showing time worked, rates of pay, gross wages and listing all deductions. The employee should not have to ask for this; it should be provided with each paycheck.

(d) Other Records

The employer is required to keep other records in addition to the "check stub" information regarding employees' deductions. Payroll records must be kept showing the name, address, Social Security number, trade or occupation, straight time rate, hourly rate of usual benefits and overtime hours worked each day and week, including agreements to work up to 10-hour days, and the actual rate of wages. Certified copies of those payroll records must be submitted within ten days of receiving a written request from any interested party.

(e) Wage Claims

If an employee has not been paid the proper prevailing wage, the employee is entitled to file a wage claim

with the department. This involves filling out a form and providing information showing work hours and rates of pay. In a wage claim investigation, the employer has the right to know the name of the claimant.

(f) Complaints

Anyone, not just a worker, may file a complaint. Complaints filed after retainage has been released may not be investigated by the department. Complaints are processed in much the same way as wage claims. While identities of persons filing wage claims are usually disclosed to the employer, identities of persons filing complaints are not.

(H) Responsibilities of Awarding Agencies

(a) Contracts for Public Work

Employers are not responsible for making the legal determination of whether a contract does or does not meet the definition of a "public works" contract. Public agencies, in awarding a contract, must make the determination of whether that contract involves "public work" and communicate it to the employers in the bid specifications and contracts.

(b) Disbursal of Public Funds

Agencies may not make any payments where employers have not submitted an Intent form that has been approved by the Industrial Statistician. Agencies may not release retainage until all employers have submitted an Affidavit form that has been certified by the Industrial Statistician. The requirement to submit these forms should also be stated in the contract.

(c) Withholding of funds.

PCHA shall, upon written request of an authorized representative of the Department of Labor and Industries, withhold from the Contractor under this contract or any other Public Works contract with the same prime Contractor, so much of the accrued payments or advances as is determined necessary to pay workmen, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract.

(d) Contract Administration

Though not legally required, the following activities may be performed by the PCHA to ensure compliance with the Public Works Act.

- Job site inspections may be performed on a routine or periodic basis to verify compliance. These inspections will include checking to see that a copy of the Intent is posted at the job site. Workers may be randomly interviewed to verify that prevailing wages are received. Apprentice workers will be asked to show their registration cards.
- References will be checked when the agency is empowered to select the lowest responsible bidder.
- Contractor registration status will be confirmed.
- Verify Industrial Insurance Status. Find out whether an employer has an industrial insurance (workers' compensation) account with L&I and that premiums have been paid.

(I) Responsibilities of Employers

(a) Contractual Obligations

Employers must abide by the terms of their contracts. On public works projects, the contract will state that

prevailing wages must be paid to the workers, and will include a listing of the prevailing wage rates that apply to that contract.

(b) Intent and Affidavit Forms

Employers must submit the Intent and Affidavit forms (approved and certified by the department) to the agency administering the contract in order to receive payment. Intent forms must be filed prior to the start of work, if possible. Affidavits are filed after completion of the work. Approval and certification of those forms by the Industrial Statistician is based on the information provided on the forms, and does not constitute approval of the classifications of labor reported.

(c) Labor Classifications

All work performed under a public works contract must be classified into one or more of the many labor classifications for which prevailing wage rates have been established, so that the appropriate wage can be applied. For example, workers installing sheet metal ducts are classified as Sheet Metal Workers, and should therefore receive the prevailing wage rate for that occupation. Employers are responsible to ensure that the proper classifications of labor are reported, and should take great care since this is where many mistakes are made. Scope of work descriptions are available as a guide in determining which labor classification is appropriate. Any doubts or unresolved questions regarding the appropriate classifications of labor should be directed to the Prevailing Wage office.

(d) Posting

An approved copy of the Intent form for each employer must be posted at the job site prior to the commencement of work for contracts in excess of \$10,000. In the event that the Intent form is in the process of being approved by the Industrial Statistician, the complete listing of the prevailing wage rates for the county where the job site is located may be posted until the approved form is received. Failure to meet these posting requirements is a violation of Chapter 39.12 RCW.

(e) Payroll Records

Contractors must keep accurate payroll records for three years following the date of acceptance of the project by the awarding agency. Payroll records must show the name, address, Social Security number, trade or occupation, straight time rate, hourly rate of usual benefits and overtime hours worked each day and week, including agreements to work up to 10-hour days, and the actual rate of wages. Upon receiving a written request by any interested party, the contractor must, within ten days, submit Certified Project Payroll records to the awarding agency and the department.

(f) Fringe Benefits

The prevailing rate of wage also includes usual benefits. Usual benefits include medical insurance, pensions, apprenticeship training programs, and vacation and holiday pay. Deductions from workers' paychecks are not usual benefits. Usual benefits are employer-paid. Benefits that are required by law (industrial insurance, social security, etc.) do not qualify as usual benefits. Employers must pay a wage and usual benefit package that adds up to the prevailing rate of wage. If an employer does not provide usual fringe benefits, then the total prevailing wage rate must be paid as an hourly wage. Special overtime rates are also established for each trade and occupation.

(J) Bids and Contracts

(a) Timing

The prevailing wage rates in effect on the bid opening date are the prevailing wage rates that apply to that project, no matter how long it lasts, unless the contract is awarded more than six months after the bids

were due. For those contracts where award was delayed more than six months, the prevailing wage rates in effect on the date of the award shall apply for the duration of the contract.

(b) Minimum Dollar Amount

There is no minimum dollar amount for public work or prevailing wage. All contracts between a public agency and a private employer, to perform work at the cost of the public agency, are public works contracts and require the payment of prevailing wages.

(c) Disputes

The Director of the Department of Labor and Industries shall arbitrate all disputes of the prevailing rate of wage.

(d) Joint State-Federal Projects

For projects where both the state prevailing wage law and the federal Davis-Bacon and related Acts apply, contractors must pay the higher of the state or the federal wage rates, on a classification by classification basis.

(K) Payment of Reduced Wage Rates

There are four circumstances in which a wage that is less than the journey level prevailing wage rate may be paid

(a) Apprentices

Apprentices are defined as those workers for whom an apprenticeship agreement has been registered and approved by the Washington State Apprenticeship and Training Council. Under this law, any "helper" or other type of assistant who is not registered with the Washington State Apprenticeship and Training Council is to be considered to be a fully qualified journey level worker, and must be paid the full journey level wage. Workers registered with the Washington State Apprenticeship and Training Council are entitled to the prevailing wage rates for an apprentice of that trade.

(b) Vocationally Handicapped

Workers whose earning capacity is impaired by physical or mental deficiency or injury may be employed upon public works for reduced wages under special certificates issued by the department. The certificate lists the percent of journey level wage that may be paid to the worker on public works projects. These certificates are filed by nonprofit vocational rehabilitation programs and may be obtained by contacting the Prevailing Wage office.

(c) Sole Proprietors, Partners, and Officer/Owners

- Sole owners of their own businesses who perform the actual work themselves are not required to pay themselves the prevailing wage rates.
- Partners in a partnership who own at least 30% of a company are likewise not required to pay themselves prevailing wage rates.
- The President, Vice President and Treasurer of a corporation are not required to pay themselves prevailing wage, as long as each owns at least 30% of the corporation.

These companies are not exempt from the remaining requirements of the statute, including the filing of Intent and Affidavit forms. Any worker who owns less than 30% of the company is not exempt and must be paid the prevailing wage rate.

(d) Public Employees

Workers regularly employed on a monthly or per diem salary by the state or any political subdivision created by its laws are exempt from the requirements of the prevailing wage law.