

CONTRACT FOR WATER AND WASTE WATER IMPROVEMENTS,  
REMEDICATION OF SEPTIC TANKS, CESSPOOLS, PIT-PRIVYS, AND OPEN PITS  
FOR TCDP#713015 HOUSE-TO-LINE CONNECTION PROJECT FOR COLONIA PUEBLO  
NUEVO

This agreement is between the Owner Purchaser,

Webb County, Texas  
1110 Victoria St. Ste 201  
Laredo, TX 78042-0029  
(956) 523-4125  
(956) 523-5010 facsimile

And the Contractor

Chavarria's Plumbing Inc.  
6320 Krone Lane  
Laredo, TX 78040

Is made as of the 25 th day of November, 2013 for the following project:

CONTRACT FOR WATER AND WASTE WATER IMPROVEMENTS, REMEDIATION OF SEPTIC TANKS, CESSPOOLS, PIT-PRIVYS, AND OPEN PITS FOR TCDP #713015 HOUSE-TO-LINE CONNECTION PROJECT FOR COLONIA PUEBLO NUEVO.

SCHEDULE

GENERAL: The County of Webb annual contract for water and waste water improvements to include the remediation of septic tanks, cesspools, pit-privies, and open pits for the Webb County Colonia House to Line Connection Program(s).

- 1 The contractor is responsible in familiarizing themselves with the area, all conditions, inspections all residential sites for construction of the water and waste water lines and must comply with all City of Laredo Plumbing Code requirements and National Plumbing Codes. The water and waste water lines must be installed from the dwelling to the water and waste water connection on the street. The water line must be a 1/4 inch, schedule (40) forty PVC line. The waste water line must be a four (4) inch schedule 40 PVC line with a clean out at the dwelling, one at the main line, one at the tap, one every 50-feet and one at every 45° or 90° turn, .

SUMMARY OF WORK:

The work of this contract comprises the installation of water and waste water yard service lines for the communities commonly referred to as Colonia Pueblo Nuevo. Yard service lines will be installed from the edge of property or the water meter for water lines and the main waste water collection line for sanitary sewer to connect with the designated buildings as shown on the drawings. The service laterals from the water main and sanitary sewer inside the street right-of-way to the property line have been installed by others. The work in the contract only covers work inside the lot.

This contract is for the amount of \$ 44,324.20 (Forty-four Thousand three Hundred twenty dollars and no Cents) shall commence on November 25, 2013 and terminate on November 25, 2014. The total linear footage of yard service lines to be installed in the communities is for an approximation of 14 homes.

Four (4) Inch Sanitary Service Yard Lines, Sch. 40 PVC line

Three quarter(!.) Inch Water Service Yard Lines Sch. 40 PVC line

Four inch "clean out" at both ends of waste water line. All four inch waste water lines and connections must be of schedule 40 PVC or better.

The CONTRACTOR shall find a single capped sanitary sewer lateral and a bank of meters (one per building to be served) at the edge of property/street right-of-way line.

All property owners impacted by the work done under this contract to include the installation of water and waste water laterals, the remediation of septic tanks, cesspools, pit privies, open pits and all work required to accomplish these tasks, shall be notified via letter from Webb County prior to commencement of construction activities.

All work done under this contract shall conform to all local ordinances and plumbing code requirements. CONTRACTOR shall arrange and pay all cost of permits not already obtained by the OWNER and inspection fees, and shall confine his operation to the limits set by law.

Portions of this project may be subject to review and acceptance by various agencies. The CONTRACTOR will be required to coordinate with these agencies for such items as issuance of permits or work orders, inspection during construction, and final acceptances. The agencies for this project that may require coordination include but are not limited to the following:

City of Laredo

Webb County (Economic Development, Planning, Engineering Departments)

Texas Commission on Environmental Quality (TCEQ) :

Texas Department of Transportation (TxDOT)

CONTRACTOR will not be allowed to enter private property without a signed "Right of Entry" Standard Form. "Right of Entry" forms will be provided by Webb County. The CONTRACTOR is responsible for procuring property owner's consent/signature for each eligible lot to be served. CONTRACTOR will not be allowed to commence work until all "Right of Entry" forms are signed and forwarded to the County(Economic Development Department).

Upon completion of the project Contractor must maintain and provide the County with final record drawing(s) engineering schematic(s) as constructed using funds under this contract. These maps shall be provided in digital format containing the source map data (original vector data) and graphic data in files on machine readable media, such as compact disc (CD), which are compatible with computer systems owned or readily available to the County. The digital copy provided shall not include a digital representation of the engineer's seal but the accompanying documentation from the engineer shall include a signed statement of when the map was authorized and that the digital map is a true representation of the original sealed document, and that a printed version with the seal has been provide to the County.

Temporary Signage must be erected by the contractor in a prominent location(s) at the construction project site(s) as directed by the County.

**Project Sign Wording:**

**"This project is funded by the Office of Rural Affairs of the Texas Department of Agriculture, to strengthen and enhance the quality of life in smaller and rural communities with funds allocated by the United States Department of Housing and Urban Development through the Community Development Block Grant Program"**

#### EXISTING CONDITIONS

Locate and protect all existing utilities impacted by this project. Those affected by this project may include:

Gas Company: Proviron, Duke Energy, Center Point  
SBC Communications  
American Electric Power and Light (AEP TX Central Co)  
Medina Electric  
Valley Telephone Service  
Alenco Telephone service

#### COORDINATIONS OF A NO FUNDING DWELLING

#### CONTRACTOR USE OF PREMISES

CONTRACTOR shall limit his use of the premises.

Assume full responsibility for the protection and safekeeping of products under this Contract, stored on the site.

Obtain and pay for the use of additional storage or work areas needed for operation.

#### PRICING:

Unit price includes materials, labor and equipment, i.e. in place of cost.

1. Price per liner foot to install a three quarter (3/4) inch water line as identified in this contract per liner foot  
**\$ 9.25**
2. Price per liner foot to install a four (4) inch (schedule 40) waste water line as identified in this contract:  
**\$ 13.76** per liner foot. Based on topography the trench depth can be between 3-12 feet in depth.
3. Cost per cleanout (one at the dwelling, one at the tap, one every 50-feet and one at every 45" or 90" tum)  
Per clean out **\$20.00**
4. Price to remove and remediate septic tank (1,000 gallon tank)  
**\$1,500.00** (Amount over 1,000 will be prorated)
5. Cost per gallon of effluent removed & disposed  
(per gallon\$ **\$.45** x (900 gal. avg.)
6. Price to remove and remediate cesspool **\$1,100.00**
7. Price to remove and remediate pit privy **\$1,100.00**
8. Price per cubic yard to fill a remediated and open pit  
**\$20.00** per cubic yard (10 yd avg.)

9. Lowering of Sewer Tap \$1,400.00  
(8-10 ft ave. Depth) (other depth will be prorated)
10. Installing new tap [prior approval required by City of Laredo]
- Water: \$1,900.00
- Sewer: \$1,200.00
11. Installation of "T" Connection for a Second Water Service Connection \$750.00
12. Installation of "Y" Connection for a Second Sewer Service Connection \$375.00

**Other Requirements:**

Master Plumbers License: all required to will be under the direction of a Master Plumber.

**Indemnity/Hold Harmless Clause:**

Hold Harmless Clause-the Contractor shall defend, indemnify and, save harmless Webb County and all its County officials, committee member, and employees from all suits, actions, or other claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person, persons, or property, on account of any negligent act or fault of the contractor, or of any agent, employee, subcontractor or supplier in the execution of, or performance under any contract, which may result from award. The contractor indemnifies and will indemnify and save harmless Webb County from liability, claim, or demand arise from event or casualty happenings or within the occupied premises themselves or happening upon or in any or the halls, elevators, entrances, stairways or approaches of or to the facilities within which the occupied promises are located. The contractor shall pay any judgment with costs, which may be obtained against Webb County growing out of such injury or damages, and shall, upon request, provide a defense to Webb County by counsel reasonably acceptable to Webb County. The contractor's indemnity hereunder shall include, but is not limited to, claims relating to patent, copyright or trademark infringement, and the like, arising out of the goods or services provided by the contractor.

**Payment and Performance Bonds:**

The contractor will be required to provide the county a hundred percent (100%) payment and performance bond for the total amount of the project cost. Bonds must be submitted and in-place before construction commences. The bonds must be from a surety company that duly authorized and licensed to operate in the State of Texas.

**Insurance Requirements:**

The contractor must provide the proper amount of insurance coverage from an insurance company has A.M. Best rating and is licensed to do business by the State of Texas. The insurance must include coverage for the liability assumed by the successful bidder to include the following:

- I. Worker Compensation and Employer's Liability
  - a. Coverage/Limit
  - b. Worker Compensation: Statutory Rule 28, TAC II 0.110
  - c. Employer's Liability:
    - Bodily injury by accident, each accident \$300,000.00
    - Bodily injury by disease, each employee \$300,000.00
    - Bodily injury by disease, policy limit \$300,000.00

The insurer will agree to waive all rights of subrogation against the County its officials, employees, and volunteers for losses arising from activities under this contract. This also applies to alternate employer endorsement under the "borrowed servant doctrine. This applies for special employees or temporary employees contracted by the successful bidder to perform special or temporary duties during the performance and the completion of this contract.

1. Commercial General Liability
  - A. Coverage/limits
    1. Bodily injury and property damage, each occurrence \$100,000.00
    2. Personal and advertising injury, each occurrence \$100,000.00
    3. Sexual misconduct coverage, each occurrence \$100,000.00
    4. Products/Completed operations (aggregate) (coverage applies for an extended five year term) \$ 50,000.00
    5. General aggregate \$100,000.00
    6. Leased or rented premises \$200,000.00
    7. Medical expenses any one person \$ 20,000.00
2. Commercial Auto Liability
  - A. Coverage/limits
    1. Combined single limit per accident for bodily injury and property damage. \$300,000.00
    2. Covers owned, non-owned and hired vehicles
    3. County included as an insured
    4. Liability coverage applies to any auto
    5. Coverage to on a standard ISO version business auto policy
    6. Umbrella/excess Liability each occurrence and aggregate \$3,000,000.00

Policy shall provide coverage over the Employer's Liability, Commercial General Liability and Automobile Liability policies.

3. Professional Liability:
  - Coverage /Limil
  - 1. Per occurrence limit \$300,000.00
  - 2. Aggregate limit \$300,000.00 per project

Aggregate limit to apply on a per project cost basis:  
 If coverage is written on a claims-made from, policy must provide for an extended reporting period of five (5) years after date of contract termination.

Property Insurance/Builders Risk:  
 Coverage/limit-Project Cost

The amount of coverage shall be for the full insurable value of the work that is the subject of the contract. Policy must be written in the name of Webb County, contractor, and

subcontractors as their interest may appear. The insurance policy must be written on all risk basis for physical loss or damage and shall include theft, vandalism, and malicious mischief. The deductible by occurrence not exceed \$1,000.00.

All deductibles are the responsibility of the contractor. Policy shall include endorsement permitting owner occupancy and the insurance shall not be cancelled or altered as a result of partial occupancy prior to completion. The insurance policy must include a clause waiving subrogation as to the contractor, subcontractors, sub-subcontractors, the County of Webb, and its employees, consultants, agents, and representatives. Policy to cover materials stored off site and on site and portions of materials in transit provided the carries liability has not been waived

**I. Contract and Contract Documents**

- (a) The project to be constructed pursuant to this contract will be financed with assistance from the TCDP #713015 house-to-line connection project and is subject to all applicable Federal and State laws and regulations.
- (b) The Plans, Specifications and Addenda, hereinafter enumerated in Paragraph I of the Supplemental General Conditions shall form part of this contract and the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth.

**2. Definitions**

Whenever used in any of the contract Documents, the following meanings shall be given to the terms here in defined:

- (a) The term "Contract" means the Contract executed between the County of Webb, hereinafter called the Locality and Chavarria's Plumbing Inc., hereinafter called Contractor, of which these GENERAL CONDITIONS, form a part.
- (b) The term "Project Area" means the area within which are the specified Contract limits of the Improvements contemplated to be constructed in whole or in part under this contract.
- (c) The term "Engineer" means Webb County or City of Laredo Engineer in charge, serving the Locality with architectural or engineering services, his successor, or any other person or persons, employed by the Locality for the purpose of directing or having in charge the work embraced in this Contract.
- (d) The term "Contract Documents" means and shall include the following: Executed Contract, Addenda (if any), Invitation for Bids, Instructions to Bidders, Signed Copy of Bid, General Conditions, Special Conditions, Technical Specifications, and Drawings (as listed in the Schedule of Drawings).

**3. Supervision By Contractor**

- (a) Except where the Contractor is an individual and gives his personal supervision to the work, the Contractor shall provide a competent superintendent, satisfactory to the Local Public Agency and the Engineer, on the work at all times during working hours with full authority to act for him. The Contractor shall also provide an adequate staff for the proper coordination and expediting of his work.
- (b) The Contractor shall lay out his own work and he shall be responsible for all work executed by him under the Contract. He shall verify all figures and elevations before proceeding with the work and will be held responsible for any error resulting from his failure to do so.

**4. Subcontracts**

- (a) The Contractor shall not execute an agreement with any subcontractor or permit any subcontractor to perform any work included in this contract until he has verified the subcontractor as eligible to participate in federally funded contracts.
- (b) No proposed subcontractor shall be disapproved by the city/county except for cause.
- (c) The Contractor shall be as fully responsible to the City of Laredo/County of Webb for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them.
- (d) The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work and required compliance by each subcontractor with the applicable provisions of the Contract.
- (e) Nothing contained in the Contract shall create any contractual relation between any subcontractor and the Locality.

**5. Fitting and Coordination of Work**

The Contractor shall be responsible for the proper fitting of all work and for the coordination of the operations of all

trades, subcontractors, or material suppliers engaged upon this Contract.

## **6. Payments to Contractor**

It is hereby requested by the Webb County Commissioner's Court that all vendors submit requests for payment within 45 days after the providing of goods and/or services to the County. This practice will allow your payment request to be processed efficiently and will expedite payment to you.

### **(a) Partial Payments**

- 1) The Contractor shall prepare his requisition for partial payment as of the last day of the month and submit it, with the required number of copies, to the Engineer for his approval. The amount of the payment due the Contractor shall be determined by adding to the total value of work completed to date, the value of materials properly stored on the site and deducting (1) ten percent (10%) of the total amount to be retained until final payment and (2) the amount of all previous payments. The total value of work completed to date shall be based on the estimated quantities of work completed and on the unit prices contained in the agreement. The value of materials properly stored on the site shall be based upon the estimated quantities of such materials and the invoice prices. Copies of all invoices shall be available for inspection of the Engineer.
- 2) Monthly or partial payments made by the Locality to the Contractor are moneys advanced for the purpose of assisting the contractor to expedite the work of construction. The Contractor shall be responsible for the care and protection of all materials and work upon which payments have been made until final acceptance of such work and materials by the Locality. Such payments shall not constitute a waiver of the right of the Locality to require the fulfillment of all terms of the Contract and the delivery of all improvements embraced in this Contract complete and satisfactory to the Locality in all details.

### **(b) Final Payment**

- 1) After final inspection and acceptance by the County of Webb of all work under the Contract, the Contractor shall prepare his requisition for final payment which shall be based upon the careful inspection of each item of work at the applicable unit prices stipulated in the Agreement. The total amount of the final payment due the Contractor under this contract shall be the amount computed as described above less all previous payments.
- 2) The Locality before paying the final estimate, shall require the Contractor to furnish releases or receipts from all subcontractors having performed any work and all persons having supplied materials, equipment (installed on the Project) and services to the Contractor, if the Locality deems it necessary in order to protect its interest. The Locality may, if it deems such action advisable, make payment in part or in full to the Contractor without requiring the furnishing of such releases or receipts and any payments made shall in no way impair the obligations of any surety or sureties furnished under this Contract.
- 3) Any amount due the Locality under Liquidated Damages, shall be deducted from the final payment due the contractor.

### **(c) Payments Subject to Submission of Certificates**

Each payment to the Contractor by the Locality shall be made subject to submission by the Contractor of all written certification required of him and his subcontractors.

### **(d) Withholding Payments**

The locality may withhold from any payment due the Contractor whatever is deemed necessary to protect the locality, and if so elects, may also withhold any amounts due from the Contractor to any subcontractors or material dealers, for work performed or material furnished by them. The foregoing provisions shall be construed solely for the benefit of the Locality and will not require the Locality to determine or adjust any claims or disputes between the Contractor and his subcontractors or material dealers, or to withhold any moneys for their protection unless the Locality elects to do so. The failure or refusal of the Locality to withhold any moneys from the Contractor shall in no way impair the obligations of any surety or sureties under any bond or bonds furnished under this Contract.

## **7. Changes in the Work**

- (a) The Locality may make changes in the scope of work required to be performed by the Contractor under the Contract without relieving or releasing the Contractor from any of his obligations under the Contract or any guarantee given by him pursuant to the Contract provisions, and without affecting the validity of the guaranty bonds, and without relieving or releasing the surety or sureties of said bonds. All such work shall be executed under the terms of the original Contract unless it is expressly provided otherwise. Additionally, all such change orders approved by Locality and the project engineer must be submitted to the TDA staff prior to execution of same with the construction contractor.
- (b) Except for the purpose of affording protection against any emergency endangering health, life, limb or property, the Contractor shall make no change in the materials used or in the specified manner of constructing and/or installing the improvements or supply additional labor, services or materials beyond that actually required for the execution of the Contract, unless in pursuance of a written order from the Locality authorizing the Contractor to proceed with the change. No claim for an adjustment of the Contract Price will be valid unless so ordered.
- (c) If applicable unit prices are contained in the Agreement, the Locality may order the Contractor to proceed with desired unit prices specified in the Contract; provided that in case of a unit price contract the net value of all changes does not increase the original total amount of the agreement by more than twenty-five percent (25%) or decrease the original the total amount by eighteen percent (18%).
- (d) Each change order shall include in its final form:
  - 1) A detailed description of the change in the work.
  - 2) The Contractor's proposal (if any) or a confirmed copy thereof.
  - 3) A definite statement as to the resulting change in the contract price and/or time.
  - 4) The statement that all work involved in the change shall be performed in accordance with contract requirements except as modified by the change order.
  - 5) The procedures as outlined in this Section for a unit price contract also apply in any lump sum contract.

8. **Claims for Extra Cost**

- (a) If the Contractor claims that any instructions by Drawings or otherwise involve extra cost or extension of time, he shall, within ten days after the receipt of such instructions, and in any event before proceeding to execute the work, submit his protest thereto in writing to the Locality, stating clearly and in detail the basis of his objections. No such claim will be considered unless so made.
- (b) Claims for additional compensation for extra work; due to alleged errors in ground elevations, contour lines, or bench marks, will not be recognized unless accompanied by certified survey data, made prior to the time the original ground was disturbed, clearly showing that errors exist which resulted, or would result, in handling more material, or performing more work, than would be reasonably estimated from the Drawings and maps issued.
- (c) Any discrepancies which may be discovered between actual conditions and those represented by the Drawings and maps shall be reported at once to the Locality and work shall not proceed except at the Contractor's risk, until written instructions have been received by him from the Locality.
- (d) If, on the basis of the available evidence, the Locality determines that an adjustment of the Contract Price and/or time is justifiable, a change order shall be executed.

9. **Termination, Delays, and Liquidated Damages**

- (a) Right of the Locality to Terminate Contract.
- (b) In the event that any of the provisions of this contract are violated by the Contractor, or by any of his subcontractors, the Locality may serve written notice upon the Contractor and the Surety of its intention to terminate the contract. The notices shall contain the reasons for such intention to terminate the contract, and unless such violation or delay shall cease and satisfactory arrangement of correction be made within ten days, the contract shall, upon the expiration of said ten (10) days, cease and terminate. In the event of any such termination, the Locality shall immediately serve notice thereof upon the Surety and the Contractor. The Surety shall have the right to take over and perform the contract. Provided, however, that if the Surety does not commence performance thereof within ten (10) days from the date of the mailing to such Surety of notice of termination, the Locality may take over the work and complete the project by bid/contract or by force account at the expense of the Contractor and his Surety shall be liable to the Locality for any excess cost incurred. In



such event the Locality may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefore.

(c) **Liquidated Damages for Delays.**

(d) If the work is not completed within the time stipulated in the applicable bid for Lump Sum or Unit Price Contract provided, the Contractor shall pay to the Locality as fixed, agreed, and liquidated damages (it being impossible to determine the actual damages occasioned by the delay) the amount of \$100.00 for each calendar day of delay, until the work is completed. The Contractor and his sureties shall be liable to the Locality for the amount thereof.

(e) **Excusable Delays.**

- 1) The right of the Contractor to proceed shall not be terminated nor shall the Contractor be charged with liquidated damages for any delays in the completion of the work due to:
- 2) Any acts of the Government, including controls or restrictions upon or requisitioning of materials, equipment, tools, or labor by reason of war, national defense, or any other national emergency;
- 3) **Any acts of the Locality;**
- 4) Causes not reasonably foreseeable by the parties to this Contract at the time of execution of the Contract which are beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, acts of another Contractor in the performance of some other contract with the Locality, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, and weather of unusual severity such as hurricanes, tornadoes, cyclones and other extreme weather conditions.
- 5) Provided, however, that the Contractor promptly notifies the Locality within ten (10) days in writing of the cause of the delay. Upon receipt of such notification, the Locality shall ascertain the facts and the cause and extent of delay. If, upon the basis of the facts and the terms of this contract, the delay is properly excusable, the Locality shall extend the time for completing the work for a period of time commensurate with the period of excusable delay.

10. **Assignment or Novation**

The Contractor shall not assign or transfer, whether by an assignment or novation, any of its rights, duties, benefits, obligations, liabilities, or responsibilities under this Contract without the written consent of the Locality; provided, however, that assignments to banks or other financial institutions may be made without the consent of the Locality. No assignment or novation of this Contract shall be valid unless the assignment or novation expressly provides that the assignment of any of the Contractor's rights or benefits under the Contract is subject to a prior lien for labor performed, services rendered, and materials, tools, and equipment supplied for the performance of the work under this Contract in favor of all persons, firms, or corporations rendering such labor or services or supplying such materials, tools, or equipment.

11. **Disputes**

- (a) All disputes arising under this Contract or its interpretation except those disputes covered by FEDERAL LABOR STANDARDS PROVISIONS whether involving law or fact or both, or extra work, and all claims for alleged breach of contract shall, within ten (10) days of commencement of the dispute, be presented by the Contractor to the Locality for decision. Any claim not presented within the time limit specified in this paragraph shall be deemed to have been waived, except that if the claim is of a continuing character and notice of the claim is not given within ten (10) days of its commencement, the claim will be considered only for a period commencing ten (10) days prior to the receipt of the Locality.
- (b) The Contractor shall submit in detail his claim and his proof thereof.
- (c) **If the Contractor does not agree with any decision of the Locality, he shall in no case allow the dispute to delay the work but shall notify the Locality promptly that he is proceeding with the work under protest.**

12. **Technical Specifications and Drawings**

Anything mentioned in the Technical Specifications and not shown on the Drawings or vice versa, shall be of like effect as if shown on or mentioned in both. In case of difference between Drawings and Technical Specifications, the Technical Specification; shall govern. In case of any discrepancy in Drawings, or Technical Specifications, the matter shall be immediately submitted to the Locality, without whose decision, said discrepancy shall not be adjusted by the Contractor, save only at his own risk and expense.

13. **Shop Drawings**

- (a) All required shop drawings, machinery details, layout drawings, etc. shall be submitted to the Engineer in 2 copies for approval sufficiently in advance of requirements to afford ample time for checking, including time for correcting, resubmitting and rechecking if necessary. The Contractor may proceed, only at his own risk, with manufacture or installation of any equipment or work covered by said shop drawings, etc. until they are approved and no claim, by the Contractor, for extension of the contract time shall be granted by reason of his failure in this respect.
- (b) Any drawings submitted without the Contractor's stamp of approval will not be considered and will be returned to him for proper resubmission. If any drawings show variations from the requirements of the Contract because of standard shop practice or other reason, the Contractor shall make specific mention of such variation in his letter of transmittal in order that, if acceptable, suitable action may be taken for proper adjustment of contract price and/or time, otherwise the Contractor will not be relieved of the responsibility for executing the work in accordance with the Contract even though the drawings have been approved.
- (c) If a shop drawing is in accordance with the contract or involves only a minor adjustment in the interest of the Locality not involving a change in contract price or time; the engineer may approve the drawing. The approval shall not relieve the Contractor from his responsibility for adherence to the contract or for any error in the drawing.

**14. Requests for Supplementary Information**

It shall be the responsibility of the Contractor to make timely requests of the Locality for any additional information not already in his possession which should be furnished by the Locality under the terms of this Contract, and which he will require in the planning and execution of the work. Such requests may be submitted from time to time as the need approaches, but each shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay. Each request shall be in writing, and list the various items and the latest date by which each will be required by the Contractor. The first list shall be submitted within two weeks after Contract award and shall be as complete as possible at that time. The Contractor shall, if requested, furnish promptly any assistance and information the Engineer may require in responding to these requests of the Contractor. The Contractor shall be fully responsible for any delay in his work or to others arising from his failure to comply fully with the provision of this section

**15. Materials and Workmanship**

- (a) Unless otherwise specifically provided for in the technical specifications, all workmanship, equipment, materials and articles incorporated in the work shall be new and the best grade of the respective kinds for the purpose. Where equipment, materials, articles or workmanship are referred to in the technical specifications as "equal to" any particular standard, the Engineer shall decide the question of equality.
- (b) The Contractor shall furnish to the Locality for approval the manufacturer's detailed specifications for all machinery, mechanical and other special equipment, which he contemplates installing together with full information as to type, performance characteristics, and all other pertinent information as required, and shall likewise submit for approval full information concerning all other materials or articles which he proposes to incorporate.
- (c) Machinery, mechanical and other equipment, materials or articles installed or used without such prior approval shall be at the risk of subsequent rejection.
- (d) Materials specified by reference to the number or symbol of a specific standard, shall comply with requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date of the Invitation for Bids, except as limited to type, class or grade, or modified in the technical specifications shall have full force and effect as though printed therein.
- (e) The Locality may require the Contractor to dismiss from the work such employee or employees as the Locality or the Engineer may deem incompetent, or careless, or insubordinate.

**16. Samples, Certificates and Tests**

- (a) The Contractor shall submit all material or equipment samples, certificates, affidavits, etc., as called for in the contract documents or required by the Engineer, promptly after award of the contract and acceptance of the Contractor's bond. No such material or equipment shall be manufactured or delivered to the site, except at the Contractor's own risk, until the required samples or certificates have been approved in writing by the Engineer. Any delay in the work caused by late or improper submission of samples or certificates for approval shall not be considered just cause for an extension of the contract time.

- (b) Each sample submitted by the Contractor shall carry a label giving the name of the Contractor, the project for which it is intended, and the name of the producer. The accompanying certificate or better from the Contractor shall state that the sample complies with contract requirements, shall give the name and brand of the product, its place of origin, the name and address of the producer and all specifications or other detailed information which will assist the Engineer in making a prompt decision regarding the acceptability of the sample. It shall also include the statement that all materials or equipment furnished for use in the project will comply with the samples and/or certified statements.
- (c) Approval of any materials shall be general only and shall not constitute a waiver of the Locality's right to demand full compliance with Contract requirements. After actual deliveries, the Engineer will have such check tests made as he deems necessary in each instance and may reject materials and equipment and accessories for cause, even though such materials and articles have been given general approval. If materials, equipment or accessories which fail to meet check tests have been incorporated in the work, the Engineer will have the right to cause their removal and replacement by proper materials or to demand and secure such reparation by the Contractor as is equitable.
- (d) Except as otherwise specifically stated in the Contract, the costs of sampling and testing will be divided as follows:
  - 1) The Contractor shall furnish without extra cost, including packing and delivery charges, all samples required for testing purposes, except those samples taken on the project by the Engineer;
  - 2) The Contractor shall assume all costs of re-testing materials which fail to meet contract requirements;
  - 3) The Contractor shall assume all costs of testing materials offered in substitution for those found deficient;
  - 4) The Locality will pay all other expenses.

17. **Permits and Codes**

- (a) The Contractor shall give all notices required by and comply with all applicable laws, ordinances, and codes of the Local Government. All construction work and/or utility installations shall comply with all applicable ordinances, and codes including all written waivers. Before installing any work, the Contractor shall examine the drawings and technical specifications for compliance with applicable ordinances and codes and shall immediately report any discrepancy to the Locality. Where the requirements of the drawings and technical specifications fail to comply with such applicable ordinances or codes, the Locality will adjust the Contract by Change Order to conform to such ordinances or codes (unless waivers in writing covering the difference have been granted by the governing body or department) and make appropriate adjustment in the Contract Price or stipulated unit prices.
- (b) Should the Contractor fail to observe the foregoing provisions and proceed with the construction and/or install any utility at variance with any applicable ordinance or code, including any written waivers (notwithstanding the fact that such installation is in compliance with the drawings and technical specifications), the Contractor shall remove such work without cost to the Locality.
- (c) The Contractor shall at his own expense, secure and pay for all permits for street pavement, sidewalks, shed, removal of abandoned water taps, sealing of house connection drains, pavement cuts, buildings, electrical, plumbing, water, gas and sewer permits required by the local regulatory body or any of its agencies.
- (d) The Contractor shall comply with applicable local laws and ordinances governing the disposal of surplus excavation, materials, debris and rubbish on or off the Project Area and commit no trespass on any public or private property in any operation due to or connected with the improvements contained in this Contract.
- (e) The Contractor will be required to make arrangements for and pay the water, electrical power, or any other utilities required during construction.
- (f) During construction of this project, the Contractor shall use every means possible to control the amount of dust created by construction. Prior to the close of a day's work, the Contractor, if directed by the Locality, shall moisten the bank and surrounding area to prevent a dusty condition.

18. **Care of Work**

- (a) The Contractor shall be responsible for all damages to person or property that occur as a result of his fault or negligence in connection with the prosecution of the work and shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance.

- (b) The Contractor shall provide sufficient competent watchmen, both day and night, including Saturdays, Sundays, and holidays, from the time the work is commenced until final completion and acceptance.
- (c) In an emergency affecting the safety of life, limb or property, including adjoining property, the Contractor, without special instructions or authorization from the Locality is authorized to act at his discretion to prevent such threatened loss or injury, and he shall so act. He shall likewise act if instructed to do so by the Locality.
- (d) The Contractor shall avoid damage as a result of his operations to existing sidewalks, streets, curbs, pavements, utilities (except those which are to be replaced or removed), adjoining property, etc., and he shall at his own expense completely repair any damage thereto caused by his operations.
- (e) The Contractor shall shore up, brace, underpin, secure, and protect as maybe necessary, all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be in anyway affected by the excavations or other operations connected with the construction of the improvements included in this Contract. The Contractor shall be responsible for the giving of any and all required notices to any adjoining or adjacent property owner or other party before the commencement of any work. The Contractor shall indemnify and save harmless the Locality from any damages on account of settlements or the loss of lateral support of adjoining property and from all loss or expense and all damages for which the Locality may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.

**19. Accident Prevention**

- (a) No laborer or mechanic employed in the performance of this Contract shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety as determined under construction safety and health standards promulgated by the Secretary of Labor.
- (b) The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of his prosecution of the work.
- (c) The Contractor shall maintain an accurate record of all cases of death, occupational disease, or injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on work under the Contract. The Contractor shall promptly furnish the Locality with reports concerning these matters.
- (d) The Contractor shall indemnify and save harmless the Locality from any claims for damages resulting from property damage, personal injury and/or death suffered or alleged to have been suffered by any person as a result of any work conducted under *this* contract.
- (e) The Contractor shall provide trench safety for all excavations more than five feet deep prior to excavation. All OSHA Standards for trench safety must be adhered to by the Contractor.
- (f) The contractor shall at all times conduct his Work in such a manner as to insure the least possible inconvenience to vehicular and pedestrian traffic. At the close of the work each day, all streets where possible in the opinion of the Locality, shall be opened to the public in order that persons living in the area may have access to their homes or businesses by the use of the streets. Barricades, warning signs, and necessary lighting shall be provided to the satisfaction of the Locality at the expense of the Contractor.

**20. Sanitary Facilities**

The Contractor shall furnish, install and maintain ample sanitary facilities for the workmen. As the needs arise, a sufficient number of enclosed temporary toilets shall be conveniently placed as required. Drinking water shall be provided from an approved source, so piped or transported as to keep it safe and fresh and served from single service containers or satisfactory types of sanitary drinking stands or fountains. All such facilities and services shall be furnished in strict accordance with existing and governing health regulations.

**21. Use of Premises**

- (a) The Contractor shall confine *his* equipment, storage of materials, and construction operations to the contract limits as shown on the drawings and as prescribed by ordinances or permits, or as may be desired by the Locality, and shall not unreasonably encumber the site or public rights of way with his materials and construction equipment.
- (b) The Contractor shall comply with all reasonable instructions of the Locality and all existing state and local regulations regarding signs, advertising, traffic, fires, explosives, danger signals, and barricades.

**Removal of Debris, Cleaning, Etc.**

The Contractor shall, periodically or as directed during the progress of the work, remove and legally dispose of all

surplus excavated material and debris, and keep the Project Area and public rights of way reasonably clear. Upon completion of the work, he shall remove all temporary construction facilities, debris and unused materials provided for work, and put the whole site of the work and public rights of way in a neat and clean condition.

23. **Inspection**

- (a) All materials and workmanship shall be subject to inspection, examination, or test by the Locality and Engineer at any and all times during manufacture or construction and at any and all places where such manufacture or construction occurs. The Locality shall have the right to reject defective material and workmanship or require its correction. Unacceptable workmanship shall be satisfactorily corrected. Rejected material shall be promptly segregated and removed from the Project Area and replaced with material of specified quality without charge. If the Contractor fails to proceed at once with the correction of rejected workmanship or defective material, the Locality may by contract or otherwise have the defects remedied or rejected materials removed from the Project Area and charge the cost of the same against any Monies which may be due the Contractor, without prejudice to any other rights or remedies of the Locality.
- (b) The Contractor shall furnish promptly all materials reasonably necessary for any tests which maybe required. All tests by the Locality will be performed in such manner as not to delay the work unnecessarily and will be made in accordance with the provisions of the technical specifications.
- (c) The Contractor shall notify the Locality sufficiently in advance of back filling or concealing any facilities to permit proper inspection. If any facilities are concealed without approval or consent of the Locality, the Contractor shall uncover for inspection and recover such facilities at his own expense, when so requested by the Locality.
- (d) Should it be considered necessary or advisable by the Locality at any time before final acceptance of the entire work to make an examination of work already completed by uncovering the same, the Contractor shall on request promptly furnish all necessary facilities, labor, and material. If such work is found to be defective in any important or essential respect, due to fault of the Contractor or his subcontractors, the Contractor shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, the actual cost of labor and material necessarily involved in the examination and replacement, shall be allowed the Contractor and he shall, in addition, if completion of the work of the entire Contract has been delayed thereby, be granted a suitable extension of time on account of the additional work involved.
- (e) Inspection of materials and appurtenances to be incorporated in the improvements included in this Contract may be made at the place of production, manufacture or shipment, whenever the quantity justifies it, and such inspection and acceptance, unless otherwise stated in the technical specifications, shall be final, except as regards (1) latent defects, (2) departures from specific requirements of the Contract, (3) damage or loss in transit, or (4) fraud or such gross mistakes as amount to fraud. Subject to the requirements contained in the preceding sentence, the inspection of materials as a whole or in part will be made at the Project Site.
- (f) Neither inspection, testing, approval nor acceptance of the work in whole or in part, by the Locality or its agents shall relieve the Contractor or his sureties of full responsibility for materials furnished or work performed not in strict accordance with the Contract.

24. **Review by Owner**

The Owner and its authorized representatives and agents shall have access to and be permitted to observe and review all work, materials, equipment, payrolls, personnel records, employment conditions, material invoices, and other relevant data and records pertaining to this Contract, provided, however that all instructions and approval with respect to the work will be given to the Contractor only by the Locality through its authorized representatives or agents.

25. **Final Inspection**

When the Improvements included in this Contract are substantially completed, the Contractor shall notify the Locality in writing that the work will be ready for final inspection on a definite date which shall be stated in the notice. The Locality will make the arrangements necessary to have final inspection commenced on the date stated in the notice, or as soon thereafter as is practicable.

26. **Deduction for Uncorrected Work**

If the Locality deems it not expedient to require the Contractor to correct work not done in accordance with the Contract Documents, an equitable deduction from the Contract Price will be made by agreement between the

Contractor and the Locality and subject to settlement, in case of dispute, as herein provided.

27. **Insurance**

The Contractor shall not commence work under this contract until he has obtained all the insurance required under this paragraph and such insurance has been approved by the Locality.

- (a) Compensation Insurance: The Contractor shall procure and shall maintain during the life of the contract Worker's Compensation Insurance as required by the State of Texas for all of his employees to be engaged in work at the site of the project under this contract and, in case of any such work sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Worker's Compensation Insurance.
- (b) Contractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance: The Contractor shall procure and shall maintain during the life of this contract Contractor's Public Liability Insurance, Contractor's Property Damage Insurance and Vehicle Liability Insurance in the following amounts: (\$300,000.00 )
- (c) Proof of insurance: The Contractor shall furnish the Locality with certificates showing the type, among class of operations covered, effective dates and date of expiration of policies. Such certificates shall also contain substantially the following statement: "The insurance covered by this certificate will not be canceled or materially altered, except after ten (10) days written notice has been received by the Locality."

28. **Warranty of Title**

No material, supplies, or equipment to be installed or furnished under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale, lease-purchase or other agreement by which an interest is retained by the seller or supplier. The Contractor shall warrant good title to all materials, supplies, and equipment installed or incorporated in the work and upon completion of all work, shall deliver the same together with all improvements and appurtenances constructed or placed by him to the Locality free from any claims, liens, or charges. Neither the Contractor nor any person, firm, or corporation furnishing any material or labor for any work covered by this Contract shall have any right to a lien upon any improvement or appurtenance. Nothing contained in this paragraph, however, shall defeat or impair the right of persons furnishing materials or labor to recover under any law permitting such persons to look to funds due the Contractor in the hands of the Locality. The provisions of this paragraph shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing materials for the work when no formal contract is entered into for such materials.

29. **Warranty of Workmanship and Materials**

Neither the final certificate of payment nor any provision in the Contract nor partial or entire use of the improvements included in this Contract by the Locality or the public shall constitute an acceptance of work not done in accordance with the Contract or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall promptly remedy any defects in the work and pay for any damage to other work resulting there from which shall appear within a period of 12 months from the date of final acceptance of the work.

30. **Compliance with Air and Water Acts**

- (a) In compliance with the Clean Air Act, as amended, 41 U.S.C. Sec. 7401 et. seq., and the regulations of the Environmental Protection Agency with respect thereto, the Contractor agrees that:
  - 1) Any facility to be utilized in the performance of this contract or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to 40 CFR 15.20.
  - 2) He will comply with all requirements of Section 114 of the Clean Air Act, as amended.
  - 3) Materials utilized in the project shall be free of any hazardous materials, except as may be specifically provided for in the specifications.
- (b) If the Contractor encounters existing material on sites owned or controlled by the Locality or in material sources that are suspected by visual observation or smell to contain hazardous materials, the Contractor shall immediately notify the Engineer and the Locality. The Locality will be responsible for testing for and removal or disposition of hazardous materials on sites owned or controlled by the Locality. The Locality may suspend the work, wholly or in part during the testing, removal or disposition of hazardous materials on sites owned or controlled by the Locality.

31. **Equal Employment Opportunity**

- (a) The Contractor will not discriminate against any employee or the applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the owner.
- (b) The Contractor will, in all solicitation; 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, or national origin.
- (c) The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
- (d) The Contractor shall take affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions.
- (e) Contractors are encouraged to participate in voluntary association; which assist in fulfilling their affirmative action obligations.
- (f) The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority.
- (g) The Contractor shall not use the affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- (h) The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts.
- (i) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents.

32. **Affirmative Action for Handicapped Workers**

The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, promotion, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

33. **Section 109 of the Housing and Community Development Act of 1974**

No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

34. **The Provision of Local Training, Employment, and Business Opportunities**

- (a) To the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
- (b) The Contractor will include this clause in every subcontract for work in connection with the project.

35. **Non Segregated Facilities**

The Contractor certifies that he does not and will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not and will not permit his employees any segregated facilities at any of his establishments, or permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. As used in this paragraph the term "segregated facilities" means any waiting rooms, work areas, rest rooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other

storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise.

**36. Job Offices**

- (a) The Contractor and his subcontractors may maintain such office and storage facilities on the site as are necessary for the proper conduct of the work. These shall be located so as to cause no interference to any work to be performed on the site. The Locality shall be consulted with regard to locations.
- (b) Upon completion of the improvements, or as directed by the Locality, the Contractors shall remove all such temporary structures and facilities from the site, and leave the site of the work in the condition required by the Contract.

**37. Partial Use of Site Improvements**

The Locality may give notice to the Contractor and place in use those sections of the improvements which have been completed, inspected and can be accepted as complying with the technical specifications and if in its opinion, each such section is reasonably safe, fit, and convenient for the use and accommodation for which it was intended, provided:

- (a) The use of such sections of the Improvements shall in no way impede the completion of the remainder of the work by the Contractor.
- (b) The Contractor shall not be responsible for any damages or maintenance costs due directly to the use of such sections.
- (c) The period of guarantee stipulated in the Section 132 hereof shall not begin to run until the date of the final acceptance of all work which the Contractor is required to construct under this Contract.

**38. Contract Documents and Drawings**

The Local Public Agency will furnish the Contractor without charge 1 copies of the Contract Documents, including Technical Specifications and Drawings. Additional copies requested by the Contractor will be furnished at cost.

**39. Contract Period**

The work to be performed under this contract shall commence within the time stipulated by the Locality in the Notice to Proceed, and shall be fully completed within 365 calendar days thereafter.

**40. Liquidated Damages**

Since the actual damages for any delay in completion of the work under this contract are impossible to determine, the Contractor and his Sureties shall be liable for and shall pay to the Locality the sum of \$100.00 Dollars ONE HUNDRED ) as fixed, agreed and liquidated damages for each calendar day of delay from the above stipulated time for completion.

This Agreement entered into as the date first written above.




OWNER.PURCHASER: WEBB COUNTY

  
\_\_\_\_\_  
Danny Valdez, Webb County Judge

  
\_\_\_\_\_  
Chavarria's Plumbing Inc.

  
\_\_\_\_\_  
Margie Ramirez Barra, County clerk



  
\_\_\_\_\_  
Marc Montemayor  
Webb County Attorney\*

\*By Law, the County Attorney's office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorneys.

## Federal Labor Standards Provisions

U.S. Department of Housing  
And Urban Development

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

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

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

**(ii)(a)** Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage rate and fringe benefits therefore only when the following criteria have been met.

**(1)** The work to be performed by the classification requested is not performed by a classification in the wage determination; and

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

**(3)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

**(b)** If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140).

**(c)** In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140).

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

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

**(iv)** If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of an laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140).

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

**3. (i) Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates or contributions or costs anticipated for bona fide fringe benefits or cash equivalents there of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017).

**(ii)(a)** The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-0014-1), U. S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149).

**(b)** Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

**(1)** That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.5(a)(3)(i) and that such information is correct and complete;

**(2)** That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

**(3)** That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

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

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

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

#### **(4) Apprentices and Trainees.**

**(i) Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration. Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as HUD or its designee may be appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

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

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

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

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

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

**(iii)** The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part "Whoever, for the purpose of ... influencing in any way the action of such Administration... makes, utters or publishes any statement, knowing the same to be false... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

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

**B. Contract Work Hours and Safety Standards Act.** As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

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

**(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

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

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

#### **C. Health and Safety**

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

**(2)** The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly part 1518) and 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).

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