

This Contract is entered into this \_\_\_\_ day of April, 2020, between the Puente Hills Habitat Preservation Authority, a joint powers authority established pursuant to Government Code Section 6500 et.seq., hereinafter referred to as Habitat Authority and \_\_\_\_\_ hereinafter referred to as CONTRACTOR.

1. Contract Documents: All rights and obligations of HABITAT AUTHORITY and CONTRACTOR are fully set forth and described in the Contract Documents. The Contract Documents are incorporated herein by reference the same as though set out in full and include the following:

- a. Plans and/or Specifications included in the Notice Inviting Bids dated January 22, 2020 and January 27, 2020 referenced as Fuel Modification with referenced documents, hereafter referred to as the "WORK". Exhibit (A)
- b. No Exhibit (B)
- c. CONTRACTOR'S proposal accepted by bid received March 3, 2020 Exhibit (C)
- d. General Conditions. (Exhibit D)
- e. CONTRACTOR'S Acknowledgement of Statutory Provisions for Payments and Assignments under Public Contracts Code Section 7103.5 and 20104.50. Exhibit (E)
- f. CONTRACTOR'S Statement of Nondiscrimination. Exhibit (F)
- g. CONTRACTOR'S Fuel Modification Schedule (Exhibit G)
- h. CONTRACTOR'S Executed Indemnification and Hold Harmless Agreement and Waiver of Subrogation and Contribution and Certificate of Insurance. Exhibit H(1) and Exhibit H(2)
- i. CONTRACTOR'S Statement of Acknowledgement to Secure Workers Compensation Coverage and Certificates of Workers Compensation and Liability Insurance. Exhibit I (1) and Exhibit I(2)
- j. CONTRACTOR'S Acknowledgement of Statutory Provisions for Resolution of Construction Contract Claims of less than \$375,000 pursuant to California Public Contract Code Sections 20104. (Exhibit J)
- k. CONTRACTOR'S Noncollusion Declaration under Public Contract Code Section 7106. ~~Exhibit (K)~~ Part of Exhibit C

HABITAT AUTHORITY and CONTRACTOR for the consideration hereinafter set forth agree as follows:

Continued on next 4 pages.

**CONTRACTOR**

NAME  
address  
address  
phone  
email

**HABITAT AUTHORITY**  
7702 Washington Ave., Suite C  
Whittier, CA 90602  
562-945-9003

\_\_\_\_\_  
Signature  
Authorized Name, Title

\_\_\_\_\_  
Signature  
Andrea Gullo, Executive Director

**FOR OFFICE USE ONLY**

Agreement Amount	\$	CONTRACT NUMBER PHHPA	TAX ID #
Amt. Prev. Encumbered	\$---	Project Name: Fuel Modification for Habitat Authority Properties, <b>LA HABRA HEIGHTS</b>	
Possible Total up to	\$	INITIALS/DATE Legal (Only if other than Standard Agrmt)	

2. Project: CONTRACTOR shall furnish all materials and equipment necessary to perform all of the WORK for completion of Fuel Modification for Habitat Authority Properties, in accordance with the Contract Documents. The work includes clearing areas identified in Exhibit A at least once a year and partial clearing twice annually of other areas as indicated, plus any necessary follow-up clearings as approved by the Habitat Authority. Work shall be **completed by June 1, 2019** and by May 1 every year thereafter unless otherwise instructed by the Habitat Authority or their representative. If the HABITAT AUTHORITY provides Contractor notice for a specific property or properties to be immediately cleared, Contractor has fourteen (14) calendar days after receipt of notice to clear the area or said contract shall be subject to termination as provided for in Section 22 below. CONTRACTOR shall have an english speaking employee present on the work site at all times. Contractor shall coordinate with the Habitat Authority Executive Director or her designee, MRCA Deputy Chief Ranger for in the field logistics, compliance with scope of work, and timing.

Scope of project may be adjusted as new developments will warrant more or less clearing. Also, scope may be adjusted to accommodate more or less clearing as a result of herbicide sprayings in zone by HABITAT AUTHORITY or its contractor/agent.

3. Compensation: HABITAT AUTHORITY shall pay the amount of \$\_\_\_\_\_ (xxxxxx thousand xxxxx hundred xxxxx dollars) as specified by CONTRACTOR in Contractor's Proposal, and incorporated herein as Exhibit C as full compensation to CONTRACTOR for furnishing all materials and for doing all the WORK contemplated and embraced in this Contract, also for all loss or damage arising out of the nature of the WORK aforesaid, from the actions of the elements, from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the WORK until its acceptance by HABITAT AUTHORITY, and for all risks of every description connected with the WORK, also for all expenses incurred by or in consequence of the suspension or discontinuance of the WORK, for all well and faithfully completing the WORK, and the whole thereof, in the manner and according to the Contract Documents. The Contract may be extended annually up to four additional terms, totaling five consecutive years at the sole option of the HABITAT AUTHORITY by providing notice in writing to CONTRACTOR. Compensation for possible additional years are presented in Contractor's proposal (Exhibit C) are as follows: Year 2- \$\_\_\_\_\_, Year 3-\$\_\_\_\_\_, Year 4-\$\_\_\_\_\_, and Year 5- \$\_\_\_\_\_. Hourly rates are in Exhibit C.

4. Notice to Proceed: Following the execution of this Contract and the approval of insurance policies and certificates, Habitat Authority shall issue a Notice to Proceed with the WORK.

5. Inspection: It is understood that the WORK to be performed by CONTRACTOR must meet the specifications of this Contract, compatible compliance with La Habra Heights City Municipal Codes, and the approval of the Habitat Authority. Habitat Authority will have the right to conduct intermittent inspections of CONTRACTOR'S WORK until completion of the Contract. If Habitat Authority determines that the WORK has been completed to its satisfaction, Habitat Authority will formally accept the WORK. If the WORK does not meet the approval of Habitat Authority will have the right to immediately terminate this Contract.

6. Discrimination: In performance of the terms of this Contract, CONTRACTOR shall not engage in, nor permit subcontractors to engage in discrimination in employment of persons because of the age, race, color, religious creed, sex, sexual orientation, national origin ancestry, physical disability, mental disability, medical condition, or marital status of such persons. Violation of this provision may result in the imposition of penalties referred to in Labor Code Section 1735. CONTRACTOR'S Statement of Nondiscrimination is attached as Exhibit F.

7. Employment of Apprentices: CONTRACTOR will comply with Labor Code Section 1777.5 that sets forth provisions for the employment of properly registered apprentices, and will not discriminate against apprentices in public works contracts as set forth in Labor Code Section 1777.6.

8. Term and Contract Time: The term of this contract shall run from date of execution to March 31, 2021. The WORK called for herein shall be commenced within ten (10) days of the Notice to Proceed issued by HABITAT AUTHORITY and shall be fully completed by June 1, 2020, and every year thereafter by May 1<sup>st</sup> unless otherwise altered in writing. (Should there be a conflict of the TERM in the Bidding documents, the CONTRACT shall be the binding terms.) The contract time is up to 30 days consecutive calendar days commencing on the date specified in the Notice to Proceed (hereinafter CONTRACT TIME). If CONTRACTOR will require an extension of time for completion of WORK, such request shall be made in writing to HABITAT AUTHORITY and will be granted only upon written approval of HABITAT AUTHORITY in accordance with the General Conditions, Section 8.0, Exhibit D. The Contract TERM may be extended annually up to four additional terms, totaling five consecutive years at the sole option of the HABITAT AUTHORITY by providing notice in writing to CONTRACTOR on or before February 1, 2021 for the second term and on Feb. 1 for all other terms to follow. If authorized, the second term shall commence on April 1, 2021 and terminate on March 31, 2022. If authorized, the third term shall commence on April 1, 2022 and terminate on March 31, 2023. If authorized, the fourth term shall commence on April 1, 2023 and terminate on March 31, 2024. If authorized, the fifth term shall commence on April 1, 2024 and terminate on March 31, 2025.

a. CONTRACTOR and HABITAT AUTHORITY recognize that if the WORK is not completed within the CONTRACT TIME, HABITAT AUTHORITY will sustain damages. CONTRACTOR and its surety shall be liable for liquidated damages and shall pay to HABITAT AUTHORITY the sum of Two Hundred Fifty Dollars (\$250.00) per day for each calendar day that Substantial Completion, as defined in Section 8.0 of the General Conditions of the Contract (EXHIBIT D) is delayed beyond the time stated herein without an extension of CONTRACT TIME approved by HABITAT AUTHORITY as provided in the Contract Documents.

b. In view of the impracticality and extreme difficulty of determining the actual amount of such damage, it is hereby agreed between HABITAT AUTHORITY and CONTRACTOR that the per diem damages set forth above are fixed and determined by the parties as the estimated damages that the HABITAT AUTHORITY will suffer by reason of such default and not by way of penalty.

CONTRACTOR Initials\_\_\_\_\_

c. It is further mutually understood and agreed between HABITAT AUTHORITY and CONTRACTOR that the sums of liquidated damages set forth above are additive for each and every day of delay in the event that the date of Substantial Completion is so exceeded. It is further understood and agreed upon by and between HABITAT AUTHORITY and CONTRACTOR liquidated damages may be assessed against progress payments or retainage and that HABITAT AUTHORITY will issue a deductive Change Order for the amounts specified herein and will reduce the Contract Sum accordingly.

d. CONTRACTOR shall notify HABITAT AUTHORITY of its fuel modification schedule which will provide in sufficient detail the chronological relationship of all activities of the WORK, including but not limited to start and completion dates of various activities. (Exhibit G) HABITAT AUTHORITY will have the right to require CONTRACTOR to make subsequent changes in the fuel modification schedule should changes in the weather or natural conditions require an increase or decrease in the frequency of fuel modification work.

9. Licenses: CONTRACTOR herein certifies that he or she is licensed by the State of California in

accordance with regulations of the Contractor's State License Board.

10. Indemnification and Insurance: Contractor shall indemnify, defend, protect, and hold harmless HABITAT AUTHORITY against all claims for damages growing out of the execution of said WORK as set forth in Exhibit H(1), CONTRACTOR'S executed Indemnification and Hold Harmless Agreement and Waiver of Subrogation and Contribution. CONTRACTOR shall obtain a policy of comprehensive bodily injury and property damage liability insurance whose provisions conform to the requirements set forth in the Contract Documents and workers compensation insurance as required by law. CONTRACTOR shall maintain such policies in full force and affect at all times until acceptance of work by HABITAT AUTHORITY. Concurrently with execution of this Contract, CONTRACTOR shall furnish to HABITAT AUTHORITY a certificate of insurance from insurer evidencing compliance in accordance with the following requirements. Exhibit H (2).

a. Policies shall name as Additional Insured the following entities: HABITAT AUTHORITY, a joint powers authority established pursuant to Government Code Section 6500 *et seq.*, their employees, agents, directors, officers, and constituent members will be covered under said policy.

b. Policy shall insure above-mentioned while acting within the scope of their duties, against all claims suits, or other actions of any nature brought for or on account of any injury, damage, or loss, including any death, arising out of or connected with work under this Contract.

c. Minimum limits of coverage of the policy shall be:  
Bodily Injury: \$1,000,000 each occurrence, \$2,000,000 annual aggregate,  
Property Damage: \$1,000,000 each occurrence for Liability, \$1,000,000 Automobile Liability, and Workers Compensation as required by law.

d. All policies must give 30 days written notice in advance by registered mail in the event of modification, cancellation or termination to the PHHPA and County. PHHPA shall not be responsible for any premiums or assessments on policy.

11. Worker's Compensation: CONTRACTOR will provide HABITAT AUTHORITY with an executed Statement of Acknowledgement to Secure Workers Compensation Coverage (Exhibit I(1)) with the HABITAT AUTHORITY before commencement of the WORK. CONTRACTOR shall comply with Section 3800 of the Labor Code by securing, paying for, and maintaining in full force and effect for the duration of the Contract, complete Workers' Compensation Insurance, and shall furnish a Certificate of Insurance to the HABITAT AUTHORITY (Exhibit I(2)) to HABITAT AUTHORITY before commencement of the Work. The HABITAT AUTHORITY, their employees, agents, officers, directors, and constituent members, will not be responsible for any claims in law or equity occasioned by failure of the CONTRACTOR to comply with this provision of the Contract. All compensation insurance policies shall bear an endorsement or shall have attached a rider whereby it is provided that, in the event of expiration or proposed cancellation of such policies for any reason whatsoever, the HABITAT AUTHORITY shall be notified by registered mail not less than 30 days before expiration or cancellation is effective.

12. Work Progress: HABITAT AUTHORITY reserves the right to do other work in connection with project or adjacent thereto by Contract or otherwise, and CONTRACTOR shall at all times conduct the WORK so as to impose no hardship on Habitat Authority or others engaged in the work, nor to cause any unreasonable delay or hindrance thereto. CONTRACTOR shall furnish materials, articles, and equipment in ample quantities and at such times as to insure uninterrupted progress of the WORK. No advertising of any description will be permitted in or about the WORK, except as provided for in the specifications.

13. Enforcement of Contract: If any action at law or in equity is brought by HABITAT AUTHORITY on account of any breach of or to enforce or interpret any of the covenants, terms, or conditions of this Contract and/or the Contract Documents, HABITAT AUTHORITY will be entitled to recover all costs, including reasonable attorneys fees, resulting from such action at law or in equity.

14. Requirement to Cure of Defects: CONTRACTOR further agrees that within ten (10) calendar days after being notified in writing by HABITAT AUTHORITY of any WORK not in accordance with requirements of Contract or any defects in the WORK, CONTRACTOR will commence and prosecute with due diligence all WORK necessary to fulfill terms of this guarantee, and to complete the WORK within a reasonable period of time. In the event CONTRACTOR fails to so comply, HABITAT AUTHORITY is authorized to immediately terminate the Contract. This section does not apply to CONTRACTOR's obligation under Section 2 above to clear within fourteen(14) days a specific property or properties upon receiving notice from HABITAT AUTHORITY. Specifically this Section does not extend CONTRACTOR's obligation to comply within fourteen (14) days by an additional ten (10) calendar days.

15. Compliance with Law: CONTRACTOR agrees to comply with all applicable Federal, State and local laws, rules, regulations or ordinances.

16. Resolution of claims or disputes of less than \$375,000 arising out of or relating to Contract: This Contract is subject to the provisions of Article 1.5 (commencing at Section 20104) of Division 2, Part 3 of the California Public Contract Code regarding the resolution of public works claims of less than \$375,000. Attached as Exhibit K is Contractor's acknowledgment that this Contract is subject to the provisions of Section 20104 of the California Public Contract Code relating to construction contract claims and Contractor's agreement to be bound by all such provisions.

17. Noncollusion: CONTRACTOR shall submit a fully executed Noncollusion Declaration in accordance with Public Contract Code Section 7106, attached to this Contract as Exhibit K.

18. Prevailing Wages: CONTRACTOR, its agents, and employees shall be bound by and comply with applicable provisions of the Labor Code and Federal, State, and local laws related to labor. The CONTRACTOR shall strictly adhere to the provisions of the Labor Code regarding minimum wages; the 8-hour day and 40 hour week; overtime; Saturday, Sunday, and holiday work; and nondiscrimination because of race, color national origin, sex, or religion. CONTRACTOR shall forfeit to the HABITAT AUTHORITY the penalties prescribed in the Labor Code for violations. CONTRACTOR shall not pay less than prevailing wage rates set by the State of California Department of Industrial Relations, Division of Labor Standards Enforcement, for the WORK contemplated by this contract. Each worker shall be paid subsistence and travel as required by the collective bargaining agreements on file with the State of California Department of Industrial

Relations.

19. Payroll Records: CONTRACTOR will comply with Section 1776 of the Labor Code which imposes responsibility upon the CONTRACTOR and subcontractors for the accuracy, maintenance, certification, and availability for inspection of payroll records in connection with the WORK.

20 Termination by HABITAT AUTHORITY as a Result of Default or for Convenience: Without limiting any rights which HABITAT AUTHORITY may have by reason of any default by CONTRACTOR hereunder, HABITAT AUTHORITY may suspend or terminate this contract in whole or in part, at any time, for any other cause, convenience or any other reason and may suspend or abandon the execution of all or any part of the WORK upon written notice to the CONTRACTOR. Such termination, suspension or abandonment shall be effective as of the date stated in the written notice, which shall be no less than fifteen (15) days from the date of the notice. Immediately upon receipt of such notice, CONTRACTOR shall cease performance of the WORK of this contract to the extent specified in the notice and shall incur no further costs or expenses, except as specified in the notice. At the option of HABITAT AUTHORITY, all or any of the subcontracts entered into by CONTRACTOR prior to the date of termination shall be terminated or shall be assigned to HABITAT AUTHORITY. In the event of termination under this subparagraph, the HABITAT AUTHORITY shall pay CONTRACTOR for all services satisfactorily rendered prior to the effective date of the termination and such payment shall be in full satisfaction of all services rendered hereunder. HABITAT AUTHORITY shall also pay CONTRACTOR fair compensation, either by purchase or rental, at the election of HABITAT AUTHORITY for any equipment of CONTRACTOR retained by HABITAT AUTHORITY. If by rental, HABITAT AUTHORITY and CONTRACTOR shall enter into a mutually acceptable rental agreement which shall provide that the HABITAT AUTHORITY is to maintain the equipment and return to CONTRACTOR in good condition, ordinary wear and tear excepted, and to maintain reasonable insurance coverages on the equipment.

21 A Working Day shall be limited to the hours of 7:00 A.M. to 4:00 P.M., Monday through Friday (excluding Saturday, Sunday and holidays).

Exhibit D  
**GENERAL CONDITIONS**

**1.0 CONTRACT DOCUMENTS**

1.1 The Contract Documents consist of the Conditions of the Contract, Exhibits to the Contract, General Conditions, Special Conditions, if any, the Drawings, the Specifications, all Addenda issued prior to award, and all Modifications thereto. A modification is (1) a written amendment signed by both parties, (2) a Change Order, (3) a written interpretation issued by the HABITAT AUTHORITY, (4) a written order for a minor change in the work issued by the HABITAT AUTHORITY. A Modification may be made only after award of contract.

1.2 The Contract Documents form the Contract. The Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral, including the bidding documents. The Contract may be amended or modified only by Modification as defined in Subparagraph 1.1.

1.3 The term Work includes all labor necessary to produce the construction required by the Contract Documents, and all materials and equipment incorporated or to be incorporated in such construction.

1.4 The Project is the total construction, of which the Work performed under the Contract Documents may be the whole or a part.

~~1.5 The Contract Documents shall be signed in not less than triplicate by the HABITAT AUTHORITY and Contractor.~~

1.6 By executing the Contract, the Contractor represents that Contractor has visited the site, familiarized itself with the local conditions under which the Work is to be performed, and correlated its observations with the requirements of the Contract Documents.

1.7 The Contract Documents are complementary and what is required by any one shall be as binding as if required by all. The intention of the Documents is to include all labor, materials, equipment, and other items necessary for the proper execution and completion of the Work.

1.8 All drawings, Specifications and copies thereof furnished by the HABITAT AUTHORITY are, and shall remain, property of the HABITAT AUTHORITY.

**2.0 CONTRACT ADMINISTRATION**

2.1 The HABITAT AUTHORITY will provide general administration of the Construction Contract including performance of the functions hereinafter described.

2.2 The HABITAT AUTHORITY shall at all times have access to the Work, including periods of preparation to commence the Work and during progress of the Work. The Contractor shall provide facilities for such access so the HABITAT AUTHORITY may perform its functions under the Contract Documents.



2.3 The HABITAT AUTHORITY will have authority to reject Work which does not conform to the Contract Documents. Whenever the HABITAT AUTHORITY considers it necessary or advisable to insure the proper implementation of the intent of the Contract Documents, HABITAT AUTHORITY will have authority to require the Contractor to stop the Work or any portion thereof, or to require special inspection or testing of the Work, whether or not such Work be then fabricated, installed or completed.

2.4 The HABITAT AUTHORITY will prepare Change Order(s), and will have authority to order minor changes in the Work.

2.5 The HABITAT AUTHORITY will conduct inspections to determine the dates of Substantial Completion and final completion of the Work. Contractor will assemble and provide HABITAT AUTHORITY with written guarantees and related documents required by the Contract.

2.6 The HABITAT AUTHORITY shall not be responsible or liable for the acts or omissions of the Contractor, any Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

### **3.0 HABITAT AUTHORITY**

3.1 The HABITAT AUTHORITY is the Puente Hills Habitat Preservation Authority, a joint powers entity of the City of Whittier, County of Los Angeles, the Sanitation Districts of Los Angeles County, and Hacienda Heights Improvement Association.

3.2 The HABITAT AUTHORITY shall furnish all surveys describing the physical characteristics, legal limits and utility locations for the site of the Project.

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

### **4.0 CONTRACTOR**

4.1 The Contractor is the person or organization identified as such in the Contract. The term Contractor means the Contractor or its authorized representative.

4.2 The Contractor shall carefully study and compare the Contract, Conditions of the Contract, Exhibits to the Contract, Drawings, Specifications, Addenda and Modifications, and shall at once report any error, inconsistency or omission it may discover. Contractor shall not be liable to the HABITAT AUTHORITY for any damage resulting from any such errors, inconsistencies or omissions. The Contractor shall do no Work without Drawings, Specifications or interpretations.

4.3 The Contractor shall supervise and direct the Work using its best skill and attention. Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

4.4 Unless otherwise specifically noted, the Contractor shall provide and pay all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work.

4.5 The Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ on the Work any unit person or anyone not skilled in the task assigned.

4.6 The Contractor warrants to the HABITAT AUTHORITY that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards may be considered defective. If required, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. No substitute "or equal" material or equipment shall be installed without written approval of HABITAT AUTHORITY.

4.7 The warranty provided in Paragraph 4.6 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

4.8 The Contractor shall pay all sales, consumer, use and other similar taxes required by law.

4.9 The Contractor shall secure and pay for all permits, governmental fees and licenses necessary for the proper execution and completion of the Work.

4.10 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications will be confirmed in writing. Other communications will be so confirmed on written request in each case.

4.11 The Contractor shall be responsible to the HABITAT AUTHORITY for the acts and omissions of all Contractor's employees and all Subcontractors, their agents and employees, and all other persons performing any of the Work under a contract with the Contractor.

4.12 The Contractor immediately after being awarded the Contract shall prepare and submit for the HABITAT AUTHORITY's approval an estimated progress schedule for the Work.

4.13 The Contractor shall maintain at the site for the HABITAT AUTHORITY one copy of all Drawings, Specifications, Addenda, approved Shop Drawings, Change Orders and other Modifications in good order and marked to record all changes made during construction. An original copy of the Drawings, marked to record all changes made during construction shall be delivered to HABITAT AUTHORITY upon completion of the Work. The drawings shall represent the "As-built" Conditions.

4.14 The Contractor shall review, stamp with approval and submit, with reasonable promptness and in orderly sequence so as to cause no delay in the work or in the work of any other contractor, all Shop Drawings and Samples required by the Contract Documents. At the time of submission the Contractor shall inform the HABITAT AUTHORITY in writing of any deviation in the Shop Drawings

or Samples from the requirements of the Contract Documents.

4.15 By approving and submitting Shop Drawings and Samples, the Contractor thereby represents that Contractor has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data. Contractor further represents that Contractor has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and of the Contract Documents.

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

4.17 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by Contractor's operations. At the completion of the Work Contractor shall remove all waste materials, rubbish, tools, construction equipment, machinery and surplus materials from and about the site. Contractor shall clean all glass surfaces and leave the Work "broomclean" or its equivalent, except as otherwise specified.

4.18 If the Contractor fails to clean up, the HABITAT AUTHORITY may do so and the cost thereof shall be charged to the Contractor.

4.19 The Contractor shall protect, defend, indemnify and hold harmless the HABITAT AUTHORITY, property owners (Habitat Authority, City of Whittier, LA Co. Sanitation Districts), the Mountains Recreation and Conservation Authority and their agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the Work provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (b) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Contractor shall execute an Indemnification and Hold Harmless Agreement and Waiver of Subrogation and Contribution setting forth Contractor's obligations that will be incorporated as part of the Contract Documents for the Project.

4.20 Any claim by an employee of Contractor, Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts Contractor and/or Subcontractor may be liable, brought against the HABITAT AUTHORITY, property owners, and/or the Mountains Recreation and Conservation Authority will be covered through worker's compensation insurance procured by Contractor and/or Subcontractor. Contractor will indemnify the HABITAT AUTHORITY, property owners, and the Mountains Recreation and Conservation Authority for any such employee claims arising out of the Work. The indemnification obligation of Contractor, for any acts or omissions of Contractor, Subcontractor, their agents or employees, anyone indirectly employed by Contractor or Subcontractor, or anyone for whose acts any of them may be liable shall not be limited in any way in the amount or type of damages, compensation or benefits payable by or for the Contractor and Subcontractor under worker's compensation acts, disability benefit acts or other employee benefit acts.

4.21 The obligations of the Contractor set forth in Paragraphs 4.19 and 4.20 above shall not extend to the liability of the HABITAT AUTHORITY, property owners, and/or the Mountains Recreation and Conservation Authority, their agents, or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the HABITAT AUTHORITY, property owners, and/or the Mountains Recreation and Conservation Authority, their agents, or employees, provided such preparation of said documents, or giving or failure to give said directions or instructions, are the primary cause of the injury or damage.

4.22 At the time of bid submission, Contractor shall identify its type and class of Contractor's License issued by the State of California. Contractor shall keep and maintain the identified Contractor's License current throughout the term of the Contract and until the Work is complete.

## **5.0 SUBCONTRACTORS**

5.1 A Subcontractor is a person or organization who has a direct contract with the Contractor to perform any of the Work at the site.

5.2 A Sub-subcontractor is a person or organization who has a direct or indirect contract with a Subcontractor to perform any of the Work at the site.

5.3 Nothing contained in the Contract Documents shall create any contractual relation between the HABITAT AUTHORITY, property owners, and/or the Mountains Recreation and Conservation Authority, and any Subcontractor or Sub-subcontractor.

5.4 As soon as practicable after bids are received and prior to the award of the Contract, the successful bidder shall furnish to the HABITAT AUTHORITY in writing for acceptance by the HABITAT AUTHORITY a list of the names of the Subcontractors of organizations (including those who are to furnish the materials or equipment fabricated to a special design) proposed for such portions of the Work as may be designated in the bidding requirements, or, if none is so designated the names of the Subcontractors proposed for the principal portions of the Work. Prior to the award of the Contract the HABITAT AUTHORITY shall notify the successful bidder in writing if the HABITAT AUTHORITY, after due investigation, has reasonable objection to any person or organization on such list. Failure of the HABITAT AUTHORITY to make an objection to any person or organization on the list prior to the award shall constitute acceptance of such person or organization.

5.5 The Contractor shall not contract with any Subcontractor or any person or organization proposed for portions of the Work designated in the bidding requirements, or, if none is so designated, with any Subcontractor proposed for the principal portions of the Work who has not been accepted by the HABITAT AUTHORITY. The Contractor will not be required to contract with any Subcontractor or person or organization against whom he has a reasonable objection.

5.6 If the HABITAT AUTHORITY required a change of any proposed Subcontractor or person or organization previously accepted by them, the Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued.

5.7 The Contractor shall not make any substitution for any Subcontractor or person or organization who has been accepted by the HABITAT AUTHORITY, unless the substitution is accepted in writing by the HABITAT AUTHORITY.

5.8 All Work performed for the Contractor by a Subcontractor shall be pursuant to an appropriate agreement between the Contractor and the Subcontractor (and where appropriate between Subcontractors and Sub-subcontractors) which shall contain provisions that:

1. preserve and protect the rights of the HABITAT AUTHORITY under the Contract and the indemnification rights of all other parties as set forth in paragraphs 4.20 and 4.21 above, with respect to the Work to be performed under the subcontract so that the subcontracting thereof will not prejudice such rights;
2. require that such Work be performed in accordance with the requirements of the Contract Documents;
3. require submission to the Contractor of applications for payment under each subcontract to which the Contractor is a party, in reasonable time to enable the Contractor to apply for payment;
4. require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to the Contractor (via any Subcontractor or Sub-subcontractor where appropriate) in the manner provided in the Contract Documents for like claims by the Contractor upon the HABITAT AUTHORITY;
5. waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by the property insurance except such rights as they may have to the proceeds of such insurance held by the HABITAT AUTHORITY, as trustee under Section 11.0 of the General Conditions;
6. obligate each Subcontractor specifically to consent to the provisions of this paragraph.

5.9 The Contractor shall pay each Subcontractor, upon receipt of payment from the HABITAT AUTHORITY, an amount equal to the percentage of completions allowed to the Contractor.

5.10 The HABITAT AUTHORITY shall not have any obligations to pay or to see to the payment of any monies to any Subcontractor except as may otherwise be required by law.

5.11 Contractor will employ only those Subcontractors who possess current Contractor's Licenses of the type and class appropriate to the Work performed by said Subcontractors. Contractor agrees that any Subcontractor hired by Contractor will maintain a current Contractor's license while performing any portion of Work until said Work is completed. Upon request of HABITAT AUTHORITY, Contractor will provide verification that any

Subcontractor hired by Contractor possesses a current Contractor's License of the type and class appropriate to the portion of the Work performed.

#### **6.0 HABITAT AUTHORITY'S RIGHT TO AWARD SEPARATE CONTRACTS**

- 6.1 The HABITAT AUTHORITY reserves the right to award other contracts in connection with other portions of the Project under these or similar Conditions of the Contract.
- 6.2 When separate contracts are awarded for different portions of the Project, "the Contractor" in the contract documents in each case shall be the Contractor who signs each separate contract.

#### **7.0 MISCELLANEOUS PROVISIONS**

- 7.1 The Contract shall be governed by the law of the place where the Project is located.
- 7.2 The HABITAT AUTHORITY and the Contractor each binds itself, its partners, successors, assigns and legal representative of such other party in respect to all covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any monies due or to become due hereunder, without the previous written consent of the HABITAT AUTHORITY.
- 7.3 Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party who gives the notice.
- 7.4 Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of its employees, agents or others for whose acts that party is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage but in no event will the time to seek legal remedy for such a claim be extended beyond the time allowed by law. Nothing in this paragraph is intended to waive the applicable statute of limitations for claims for bodily injury, personal injury, property damage, or breach of contract.
- 7.5 The HABITAT AUTHORITY shall have the right, prior to signing the Contract, to require the Contractor to furnish bonds covering the faithful performance of the Contract and the payment of all obligations arising thereunder in such form and amount as the HABITAT AUTHORITY may prescribe and with such sureties as may be agreeable to the parties. If such bonds are stipulated in the bidding requirements, the premiums shall be paid by the Contractor, if required subsequent to the submission of quotations or bids, the cost shall be reimbursed by the HABITAT AUTHORITY. The Contractor shall deliver the required bonds to the HABITAT AUTHORITY no later than the date of execution of the Contract, or, if the Work is commenced prior thereto in response to a notice to proceed, the Contractor shall, prior to commencement of the Work, submit evidence satisfactory to the HABITAT AUTHORITY that such bonds will be issued.

- 7.6 If the Contractor defaults or neglects to carry out the Work in Accordance with the Contract Documents or fails to perform any provisions of the Contract, the HABITAT AUTHORITY may, after seven days' written notice to the Contractor and without prejudice to any other remedy HABITAT AUTHORITY may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the HABITAT AUTHORITY.
- 7.7 The Contractor shall pay all royalties and license fees. Contractor shall protect, indemnify, defend and hold harmless the HABITAT AUTHORITY in any and all suits or claims arising from or on account of infringement of any patent rights, unless the HABITAT AUTHORITY has specified use of a particular design, process, or product of a particular manufacturer or manufacturers, in which case the HABITAT AUTHORITY shall be responsible for all such loss. If the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, Contractor shall be responsible for such loss unless Contractor promptly gives written notice to the HABITAT AUTHORITY of the suspected infringement to allow HABITAT AUTHORITY reasonable time to investigate, prevent, or cure said infringement.
- 7.8 If the Contract Documents, laws, ordinances, rules, or regulations of any public authority having jurisdiction require any Work to be inspected, tested, or approved, the Contractor shall give the HABITAT AUTHORITY timely notice of its readiness and schedule such inspection, testing, or approval.
- 7.9 If after the commencement of the Work the HABITAT AUTHORITY determines that any work requires special inspection, testing or approval which Subparagraph 7.8 does not include, HABITAT AUTHORITY will instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as in Subparagraph 7.8. If such special inspection or testing reveals a failure of the Work to comply (1) with the requirements of the Contract Documents or (2) with respect to the performance of the Work, with laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, the Contractor shall bear all costs thereof, otherwise the HABITAT AUTHORITY shall bear such costs, and an appropriate Change Order shall be issued.
- 7.10 Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered to the HABITAT AUTHORITY.
- 7.11 Neither the observations of the HABITAT AUTHORITY in Administration of the Construction Contract, nor inspections, tests or approvals by persons other than the Contractor shall relieve the Contractor from obligations to perform the Work in accordance with the Contract Documents.
- 7.12 The Contractor and its subcontractors shall be properly licensed as may be required by all state and local authorities.

## **8.0 TIME**

- 8.1 The Contract Time is the period of time allotted in the Contract Documents for completion of the Work.
- 8.2 The date of commencement of the Work is the date established in a Notice to Proceed. If there is no Notice to Proceed, it shall be the date of the Contract or such other date as may be established therein.
- 8.3 The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the HABITAT AUTHORITY when construction is sufficiently complete, in accordance with the Contract Documents, so the HABITAT AUTHORITY may occupy the Work or designated portion thereof for the use for which it is intended.
- 8.4 The Contractor shall begin the Work on the date of commencement as defined in Subparagraph 8.2. Contractor shall carry the Work forward expeditiously with adequate forces and shall complete it within the Contract Time.
- 8.5 If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the HABITAT AUTHORITY, or by any separate contractor employed by the HABITAT AUTHORITY, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in transportation, unavoidable casualties or any causes beyond the Contractor's control, or by delay authorized by the HABITAT AUTHORITY pending arbitration, or by any cause which the HABITAT AUTHORITY determines may justify the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the HABITAT AUTHORITY may determine.
- 8.6 All requests for extension of time to complete the Work shall be made in writing to the HABITAT AUTHORITY as soon as it becomes known to Contractor that an extension is necessary, but no more than fifteen days after the scheduled completion date of any portion of the Work. HABITAT AUTHORITY will have sole discretion to determine if a request for extension will be granted and whether per diem damages will be charged to Contractor for any delay. HABITAT AUTHORITY will provide written approval or disapproval of Contractor's request for extension, and will notify Contractor the amount of per diem damages that will be charged to the Contractor for the delay. If Contractor fails to timely request an extension, the right of Contractor to request an extension will be waived and Contractor will pay liquidated damages as set forth in the Contract Documents. In the case of a continuing cause of delay only one timely request for extension is necessary.
- 8.7 Paragraph 8.3 does not exclude the recovery of damages for delay by either party under other provisions of the Contract Documents.
- 8.8 Contractor shall provide HABITAT AUTHORITY with a construction schedule that will provide in sufficient detail the chronological relationship of all activities of the Work, including but not limited to start and completion dates of various activities. Said schedule



should also include time for submittal of shop drawings to HABITAT AUTHORITY for approval, procurement of materials, scheduling of equipment, and the removal, protection, or relocation of utilities if said activities are pertinent to Contractor's obligations under the Contract.

## **9.0 PAYMENTS AND COMPLETION**

- 9.1 The Contract Sum is stated in the Contract, and is the total amount payable by the HABITAT AUTHORITY to the Contractor for the performance of the Work under the Contract Documents.
- 9.2 At the beginning of the project, the Contractor shall submit to the HABITAT AUTHORITY a cost breakdown for the various subunits of the contract. The Contractor may then submit progress payment requests based on this breakdown, indicating percentage of completion and payment due. All payment requests shall include a 10% retention based on the value of the labor and materials incorporated into the Work. At least ten days before each progress payment falls due, the Contractor shall submit to the HABITAT AUTHORITY the itemized application for payment less the 10% retention supported by such data substantiating the Contractor's right to payment as HABITAT AUTHORITY may require.
- 9.3 The Contractor warrants and guarantees that title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the project or not, will pass to the HABITAT AUTHORITY upon receipt of such payment by the Contractor, free and clear of all claims, liens, security interests or encumbrances, hereinafter referred to in this Article 9 as "liens"; and that no Work, materials or equipment covered by an application for Payment will have been acquired by the Contractor or any other person performing the work at the site or furnishing materials and equipment for the project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.
- 9.4 Payment shall be made to the Contractor by the HABITAT AUTHORITY in the amount of 90% of the value of the labor expended upon and materials incorporated into the Work. Said payment shall be based upon the total annual contract price and only such labor and materials therein required. Neither final payment nor the remaining retainage shall become due to the Contractor until sixty (60) calendar days following the HABITAT AUTHORITY's recordation of a Notice of Completion. In the event of a dispute between HABITAT AUTHORITY and the Contractor, HABITAT AUTHORITY may withhold from final payment an amount not to exceed 150% of the disputed amount. Final payment is subject to withholding under Article 9.5 of these General Conditions.
- 9.5 The making of final payment shall constitute a waiver of all claims by the HABITAT AUTHORITY except those arising from:
1. Unsettled liens.
  2. Faulty or defective work appearing after substantial completion.

3. Failure of the work to comply with the requirements of the Contract Documents.
4. Terms of any special guarantees required by the contract documents.
- 9.6 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and still unsettled.
- 9.7 Habitat Authority will require that Contractor file separate bid, payment, and performance bonds executed by an approved surety insurer. Each bond shall be filed, approved, and enforced under the requirements set forth in Code of Civil Procedure Sections 3247 et seq.

#### **10.0 SAFETY PRECAUTIONS AND PROGRAMS**

- 10.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.
- 10.2 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:
  1. All employees hired to perform the Work and all other persons who may be affected by the performance of the Work;
  2. All the Work and all materials and equipment to be incorporated therein, whether in storage on or off site, under the care, custody or control of the Contractor, or any of his Subcontractors or Sub-subcontractors; and
  3. Property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- 10.3 The Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect persons or property from damage, injury or loss. Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and barriers.
- 10.4 All damage or loss to any property referred to in Paragraphs 10.2 and 10.3 above caused in whole or in part by the Contractor, any Subcontractor, and Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor, except damage or loss attributable to faulty Drawings or Specifications or to the acts or omissions of the HABITAT AUTHORITY, and not attributable to the fault or negligence of the Contractor.
- 10.5 If any emergency threatens injury to persons or damage or loss to property during the Contractor's preparation to perform the Work, the performance of the Work, and until completion of Work, Contractor shall act to prevent the threatened damage, injury or loss.

Any extension of time requested by the Contractor on account of such an emergency shall be granted by HABITAT AUTHORITY as provided in the provisions under "Article 8.0 Time Extensions" as set forth above.

- 11.6 Contractor and each Subcontractor shall evaluate, and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (1) location, condition, layout, and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools, and equipment, and (5) other similar issues. HABITAT AUTHORITY assumes no responsibility or liability for the physical condition or safety of the Project site. Contractor shall be solely responsible for providing a safe place for the performance of the work. HABITAT AUTHORITY shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Subparagraph, except as may be required pursuant to relocation of utilities under Government Code Section 4215.

#### **11.0 CONTRACTOR'S LIABILITY INSURANCE**

11.1 The Contractor shall purchase and maintain such insurance that will protect Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by Contractor, by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

1. Claims under workmen's compensation, disability benefit and other similar employees' benefit acts;
  2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees, and claims insured by usual personal injury liability coverage;
  3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees, and claims insured by usual personal injury liability coverage; and
  4. Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom;
  5. Claims of vandalism and/or loss or damage or theft of any tools, equipment, forms, shanties, storage buildings and/or other items owned or rented by the Contractor.
- 11.2 The insurance required by Subparagraph 11.1 shall be written for not less than any limits or liability specified in the Contract Documents, or required by law, whichever is greater, and shall include contractual liability insurance as applicable to the Contractor's obligations.
- 11.3 Certificates of Insurance acceptable to the HABITAT AUTHORITY shall be filed with the HABITAT AUTHORITY prior to commencement of the Work. These Certificates shall

contain a provision that coverage afforded under the policies will not be canceled until at least fifteen days' prior written notice has been given to the HABITAT AUTHORITY.

- 11.4 The HABITAT AUTHORITY shall be responsible for purchasing and maintaining liability insurance and, may, at it's option, purchase and maintain such insurance as will protect it against claims which may arise from operations under the Contract.

## **12.0 CHANGE ORDERS**

- 12.1 The HABITAT AUTHORITY, without invalidating the Contract, may order Changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such Changes in the Work shall be authorized by Change Order, and shall be executed under the applicable conditions of the Contract Documents.
- 12.2 A Change Order is a written order to the Contractor signed by the HABITAT AUTHORITY issued after the execution of the Contract, authorizing a Change in the Work or an adjustment in the Contract Sum of the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order.
- 12.3 The cost or credit to the HABITAT AUTHORITY resulting from a Change in the Work shall be determined in one or more of the following ways:
- (a) By mutual acceptance of a lump sum properly itemized;
  - (b) By unit prices stated in the Contract Documents or subsequently agreed upon; or
  - (c) By cost and a mutually acceptable fixed or percentage fee.
- 12.4 If Contractor receives a Change Order and none of the methods set forth in Subparagraph 12.3 is agreed upon, Contractor shall promptly proceed with the Work involved. The cost of such Work shall then be determined by the HABITAT AUTHORITY on the basis of the Contractor's reasonable expenditures and savings, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Paragraph 12.3 (c) above, the Contractor shall keep and present, in such form as the HABITAT AUTHORITY may prescribe, an itemized accounting together with appropriate supporting data.
- 12.5 If unit prices are stated in the Contract Documents or subsequently agreed upon, and the quantities originally contemplated are changed in a proposed Change Order so that application of the agreed unit prices to the quantities of Work proposed will create a hardship on the HABITAT AUTHORITY or the Contractor, the applicable unit prices shall be equitably adjusted to prevent such hardship.
- 12.6 Should concealed conditions encountered in the performance of the Work below the surface of the ground be at variance with the conditions indicated by the Contract Documents, or

should the parties discover unknown physical conditions below the surface of the ground of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract, the Contract Sum shall be equitably adjusted by Change Order upon claim by either party, made within a reasonable time, after the first observance of the conditions.

- 12.7 If the Contractor wishes to make a request for an increase in the Contract Sum or an extension in the Contract Time, Contractor shall give the HABITAT AUTHORITY written notice thereof within a reasonable time after the occurrence of the event giving rise to such request, but no more than 15 days after the scheduled completion date of any portion of the work in case of a delay as set forth in Article 8.0 Time Extensions above. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with Subparagraph 10.5. No such request shall be valid unless so made. No Contract Sum or Contract Time can be changed without an authorized Change Order.
- 12.8 The HABITAT AUTHORITY shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes may be effected by Field Order or by other written order. Such changes shall be binding on the HABITAT AUTHORITY and the Contractor.
- 12.9 A change in the Contract Sum or the Contract time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that HABITAT AUTHORITY has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim for an increase in any amounts due under the Contract Documents or for a change in any time period provided for in the Contract Documents.
- 12.10 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change, any impact such change may have on the unchanged Work, and any and all adjustments to the Contract Sum and the construction schedule. In the event a Change Order increases the Contract Sum, the Contractor shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Contract Documents.
- 12.11 HABITAT AUTHORITY may approve additional payment not to exceed 10% of the agreed amounts following completion of the procedures set forth in this Section. Change orders exceeding these limits shall be approved by the HABITAT AUTHORITY Board.
- 12.12 The value of the Work to be changed, added, or omitted shall be determined by the lump sum or unit prices, if any, stipulated for such work in the Contract Documents. If no prices are stipulated, the value shall be determined by whichever of the following methods or combination of them the HABITAT AUTHORITY may elect:

- (a) By adding or deducting a lump sum or an amount determined by a unit price agreed upon between the parties.
- (b) By adding (1) the actual net cost to the Contractor of labor in accordance with the established rates, including required union benefits, premiums the Contractor is required to pay for workers' compensation and liability insurance, and payroll taxes on such labor; (2) the actual cost to the Contractor of materials and equipment and such other direct costs as may be approved by the HABITAT AUTHORITY, less all savings, discounts, rebates, and credits; (3) an allowance of thirty percent (30%) for all overhead on items (1) and (2) above; and (4) an allowance of ten percent (10%) for profit on items (1), (2), and (3) above.
- (c) Any method of resolution as determined by HABITAT AUTHORITY.

### **13.0 UNCOVERING AND CORRECTION OF WORK**

- 13.1 Contractor may not cover work without authorization by the HABITAT AUTHORITY. In the event Contractor covers the Work without authorization by HABITAT AUTHORITY, Contractor must, at Contractor's expense, uncover the Work to allow for HABITAT AUTHORITY's observation of the Work. If, after observation, HABITAT AUTHORITY determines that the Work must be removed and replaced, such removal and replacement will be at the expense of Contractor.
- 13.2 The Contractor shall promptly correct all Work rejected by the HABITAT AUTHORITY as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work.
- 13.3 If, within one year after the Date of Substantial Completion, or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any of the Work is found to be defective, or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the HABITAT AUTHORITY to do so unless the HABITAT AUTHORITY has previously given the Contractor a written acceptance of such notice promptly after discovery of the condition.
- 13.4 All such defective or nonconforming Work under Subparagraphs 13.3 shall be removed from the site where necessary and the Work shall be corrected to comply with the Contract Documents without cost to the HABITAT AUTHORITY.
- 13.5 The Contractor shall bear the cost of making good all work of separate contractors destroyed or damaged by such removal or correction.
- 13.6 The obligations of the Contractor under the sections of Article 13.0 "Uncovering and Correction of Work" shall be in addition to and not in limitation of any obligations imposed upon him by special guarantees required by the Contract Documents or otherwise prescribed by law.

#### **14.0 TERMINATION BY THE CONTRACTOR**

- 14.1 If the Work is stopped for a period of thirty days under an order of any court or other public authority having jurisdiction, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, then the Contractor may, upon seven days' written notice to the HABITAT AUTHORITY terminate the Contract and recover from the HABITAT AUTHORITY payment for all Work executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit and damages.

#### **15.0 TERMINATION BY THE HABITAT AUTHORITY**

- 15.1 If the Contractor is adjudged a bankrupt, or Contractor makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of Contractor's insolvency, or if Contractor persistently or repeatedly refuses or fails (except in cases for which extension of time is provided) to supply enough properly skilled workmen or proper materials, or if Contractor fails to make prompt payment to Subcontractors for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Contract Documents, then the HABITAT AUTHORITY, given that sufficient cause exists to justify such action, may, without prejudice to any right or remedy and after giving the Contractor and its surety, if any, seven days' written notice, terminate the employment of the Contractor, and take possession of the site and of all materials, equipment, tools, construction equipment, finish the Work by whatever method deemed expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.
- 15.2 If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor shall pay the difference to the HABITAT AUTHORITY.
- 15.3 Without limiting any rights which HABITAT AUTHORITY may have by reason of any default by Contractor, HABITAT AUTHORITY may suspend or terminate the Contract in whole or in part, at any time, for any other cause, convenience or any other reason and may suspend or abandon the execution of all or any part of the Work upon written notice to the Contractor. Such termination, suspension or abandonment shall be effective as of the date stated in the written notice, which shall be no less than fifteen (15) days from the date of the notice. Immediately upon receipt of such notice, Contractor shall cease performance of the Work to the extent specified in the notice and shall incur no further costs or expenses, except as specified in the notice. At the option of HABITAT AUTHORITY, all or any of the subcontracts entered into by Contractor prior to the date of termination shall be terminated or shall be assigned to HABITAT AUTHORITY. In the event of termination under this subparagraph, the HABITAT AUTHORITY shall pay Contractor for all services satisfactorily rendered prior to the effective date of the termination and such payment shall be in full satisfaction of all services rendered hereunder.

HABITAT AUTHORITY shall also pay Contractor fair compensation, either by purchase or rental, at the election of HABITAT AUTHORITY for any equipment of Contractor retained by HABITAT AUTHORITY. If by rental, HABITAT AUTHORITY and Contractor shall enter into a mutually acceptable rental agreement which shall provide that the HABITAT AUTHORITY is to maintain the equipment and return to Contractor in good condition, ordinary wear and tear excepted, and to maintain reasonable insurance coverages on the equipment.

#### **16.0 GENERAL REQUIREMENTS**

- 16.1 Contractor shall clean up all areas outside the limit of work which have been littered or otherwise made unsightly as a result of occupancy or use of such areas, or as a direct result of the work of this Contract.
- 16.2 Contractor shall restore to original condition all areas not within the limit of work but injured, damaged, marred, or otherwise affected by the transportation or occupancy of materials, equipment, or workmen belonging to, or employed by the Contractor, Subcontractors, Sub-subcontractors, or those directly or indirectly employed by any of them, or anyone whose acts any of them may be liable.
- 16.3 Contractor shall clean all areas where work under this contract has been performed, and all areas occupied by the Contractor's materials, equipment and workmen.
- 16.4 Contractor shall remove from the premises all material used for form work, surplus materials, equipment, and all debris resulting from the work or caused by the workmen.
- 16.5 Contractor shall wash down or broom-clean all paved surfaces and shall rake-clean all bare earth areas.
- 16.6 Final acceptance of the work done under the contract will not be given until the completion cleaning has been accomplished and approved by the HABITAT AUTHORITY.