ARTICLE 2A-1

LABOR PROVISIONS

1. CONTRACTOR BONDS

Payment and performance bonds are required to be filed prior to issuance of Notice to Proceed. The specific requirements for such bonds are set forth in Section 3.124 of the General Provisions.

2. NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

In accordance with §1.8 of the Pueblo Municipal Code (entire Code included by reference), all contractors shall meet and comply with the following provisions which shall be contained in all municipal contracts:

a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, ancestry, disability, age, or national origin. The contractor will take affirmative action in all areas of employment to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to race, color, religion, sex, sexual orientation, ancestry, disability, age, or national origin. Areas of employment shall mean and include, but shall not be limited to, the following: initial employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoffs, terminations, rates of pay, terms of compensation and selection for training, including apprenticeship. The contractor will post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination and equal employment opportunity paragraph. Failure to subscribe to and accept the nondiscrimination and equal employment requirements of this Chapter shall render a bidder ineligible for a municipal contract award and ineligible to participate in the work for which a municipal contract award is made. (§§1.8.3 and 1.8.4 of the PMC; Ord. No. 4479, 5-22-78)

b. It is the policy of the City to provide equal opportunity in employment without regard to race, color, religion, sex, sexual orientation, ancestry, disability, age, or national origin. It is hereby deemed and declared to be for the public welfare and in the best interests of the City to require bidders and contractors furnishing and providing work, services, supplies and materials to the City under municipal contracts not to discriminate in the hiring and promoting of employees in order to further equal employment opportunities for members of minority groups and women. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, ancestry, disability, age, or national origin. (§1.8.3 of the PMC; Ord. No. 4479, 5-22- 78; Ord. No. 8453 §2, 2-27-12)

c. Contractor will meet or comply with the letter and spirit of Chapter 8, Title 1 of the Pueblo Municipal Code (as amended) and applicable State statutes. If the municipal contract involves construction work or the providing of supplies or materials in excess of ten thousand dollars ($10,000.00) in the building and construction trades industry, Contractor shall have adopted and file with the City a copy of the Contractor's complying Affirmative Action Program. A complying Affirmative Action Program shall be a written affirmative action program meeting all the requirements of Chapter 60 of Title 41, Code of Federal Regulations (41 CFR, Chapter 60), including all parts and subparts thereof. This requirement applies regardless of whether Federal financial assistance has been provided for this project.

d. In the event of Contractor's non-compliance with the requirements of Chapter 8, Title 1 of the Pueblo Municipal Code (as amended), the contract may be cancelled, terminated, or suspended, in whole or in part, and Contractor may be declared ineligible for further contracts with the City of Pueblo.

e. Contractor will include the provisions of the above listed paragraphs (a) through (d) in every sub-contract entered in to by Contractor to provide and furnish work, services, supplies, or materials under a City project.

3. HUD SECTION 3 COVERED CONTRACT REQUIREMENTS:

The provisions of this Section shall apply to all covered contracts as provided in 24 C.F.R. Part 135. As used herein, the term "contractor" shall mean the party entering into this agreement with the City of Pueblo, and the term "contract" shall mean this agreement, regardless of any other term or phrase by which it may be called.

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

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

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

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

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

4. COMPLIANCE REVIEW

a. The City of Pueblo shall have the power to review, upon not less than five (5) days notice, and during normal business hours, the employment practices of Contractor during the performance of every such City project, and of subcontractors during the performance of every sub-contract awarded thereunder, to obtain information relating to compliance or non-compliance with non-discrimination and equal employment requirements.

b. When a written complaint is filed and an investigation by the City indicates that there has been a violation of this provision, or when a compliance review by the City indicates that a contractor or subcontractor has violated this provision, the City shall issue and cause to be served on said contractor or subcontractor a Notice of Violation. Such notice shall specify the violations and shall direct the contractor or subcontractor to respond in writing within ten (10) days to show cause why the sanctions of the provision should not be imposed. The City shall forward a copy of the Notice of Violation and the response of the contractor or subcontractor to the City Manager within thirty (30) days from the date of such notice.

c. The City Manager or authorized City representative shall review the Notice of Violation and response and shall determine whether any violations have occurred. If the City representative has determined that a violation has occurred, he may impose such sanctions as deemed appropriate, including, but not limited to, suspending or terminating the contract involved or any portion or portions thereof, or causing to be removed from the list of eligible pre-qualified contractors the names of contractors or subcontractors found to be in noncompliance with the non-discrimination and equal employment opportunity requirements of the provision and the provision of any such contract or subcontract awarded thereunder until such time as the City is satisfied that such contractors or subcontractors are in compliance with said requirements.

5. FEDERAL REQUIREMENTS GOVERN

Federal requirements govern. Whenever the provisions and requirements of this Chapter, or of the bidding specifications, conflict in any way or to any degree with the nondiscrimination and equal employment opportunity requirements of the United States of America and any such contract under consideration is funded in whole or in part by the United States of America or is otherwise subject to requirements having the force of law of the United States of America, then such requirements of the United States of American shall govern and control. (Ord. No. 4479, 5-22-78)

6. By submitting a bid Contractor agrees to abide by the provisions herein set forth and will require any and all subcontractors to comply with said provisions.

7. FEDERAL LABOR STANDARDS PROVISIONS

Any and all contractors, subcontractors, independent contractors, suppliers, facilitators or any person participating in any program or activity receiving federal financial assistance shall comply with federal labor standards regulations as follows:

1. Davis-Bacon Act
2. Contract Work Hours and Safety Standards Act
3. Copeland Act (Anti-Kickback Act)
4. Fair Labor Standards Act

The U. S. Department of Labor has published rules and regulations corresponding to the above regulations at Title 29 CFR Parts 1, 3, 5, 6 and 7.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION-PRIMARY COVERED TRANSACTIONS: (Applicable to all Federal-aid contracts per 49 CFR 29).

By signing and submitting a proposal, Contractor is providing the certification set out below.

The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the City or department's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The certification in this clause is a material representation of fact upon which reliance was placed when the City or department determined to enter into this transaction. If it is later determined that the contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the City or the department may terminate this transaction for cause or default.

The contractor shall provide immediate written notice to the City or department to which this proposal is submitted if at any time the contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded*, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the City or department to which this proposal is submitted for assistance in obtaining a copy of those regulations.

The contractor agrees by signing and submitting a proposal that it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the City or department entering into this transaction.

The contractor further agrees by signing and submitting a proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the City or department entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A contractor in a covered transaction may rely upon a certification of a subcontractor (prospective participant) in a lower tier covered transaction that is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A contractor may decide the method and frequency by which it determines the eligibility of its principals. Each contractor may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

If a contractor in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the City or department may terminate this transaction for cause or default.

The Contractor hereby certifies to the best of its knowledge and belief, that it and its principals:

a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property.

c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in this certification; and

d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION APPLICABLE TO ALL SUBCONTRACTS, PURCHASE ORDERS AND OTHER LOWER TIER TRANSASTIONS OF $25,000 OR MORE

By signing and submitting a proposal, the prospective lower tier participant is providing the certification set out below:

The certification in this clause is a material representation of fact upon which reliance was placed when the City or department determined to enter into this transaction. If it is later determined that the participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the City or the department may pursue available remedies, including suspension and/or debarment.

The participant shall provide immediate written notice to the City or department to which this proposal is submitted if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the City or department to which this proposal is submitted for assistance in obtaining a copy of those regulations.

The participant agrees by signing and submitting a proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the City or department with which this transaction originated.

The participant further agrees by signing and submitting a proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the City or department entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

If a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the City or department with which this transaction originated may pursue available remedies, including suspension and/or debarment.

The Participant certifies by signing and submitting a proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency;

Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

PAYMENT OF PREVAILING WAGES:
Applicable to all Federal-aid (CDBG) construction contracts exceeding $2,000 and to all related subcontracts:

All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c) the full amounts of wages and bona fide fringe benefits or cash equivalents thereof due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor, hereinafter called "the wage determination", which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination 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. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1 (b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid.

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. 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.

CONFORMANCE RATES:
The federal awarding agency shall require that any class of laborers or mechanics employed under the contract which is not listed in the wage determination shall be classified in conformance with the wage decision.

An additional classification, wage rate and fringe benefits **may** be approved only when the following criteria have been met:

(1) The work to be performed by the additional classification is not performed by any other classification in the wage determination;
(2) The additional classification is utilized in the area by the construction industry;
(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

Contractor is responsible for requesting additional wage classifications and wage rate and fringe benefits not contained in the wage decision. Temporary approvals by the federal awarding agency may be issued pending review of the request by the Department of Labor. Any work performed during the Department of Labor Wage and Hour Administrator ("Department of Labor") review period will be paid at the base wage and fringe benefit amount conditionally approved by the awarding agency until a conformance rate is assigned by the Department of Labor. If the request is denied by the Department of Labor, contractor will immediately begin to pay the required wages and make wage restitutions to the affected employees. Contractor shall bear the risk that the request for additional classifications will be denied. Contractor shall be solely responsible for appealing any wage determinations to the Department of Labor. The City will not grant any changes to the Contract Agreement based upon mistakes or denied requests relating to prevailing wages.

PAYMENT OF FRINGE BENEFITS:
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 or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof. If the contractor or subcontractor does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met.

APPRENTICE PARTICIPATION:
Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program duly registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau.

The allowable ratio of apprentices to journeyman-level employees 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 employee 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 listed in the wage determination for the classification of work actually performed.

All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3 and 5 are herein incorporated by reference in this contract.

WITHHOLDING PAYMENT FOR UNPAID WAGES:
The City shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor 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 contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics 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 employed or working on the site of the work, all or part of the wages required by the contract, the City may, after written notice to the contractor, 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.

VIOLATIONS AND LIABILITY FOR UNPAID WAGES AND LIQUIDATED DAMAGES:
In the event of any violation of the requirements set forth in this document, the contractor and any subcontractor responsible for the violation shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages.

STATEMENTS AND PAYROLLS:
Applicable to all Federally-assisted construction contracts exceeding $2,000 and to all related subcontracts. The contractor shall comply with the Copeland Regulations of the Secretary of Labor. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, watchmen, helpers and guards working at the site of the work. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof 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 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 and subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices under approved programs shall maintain written evidence of the registration of apprentices and ratios and wage rates prescribed in the applicable programs.

Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the awarding agency or an agent thereof, a certified payroll report of wages paid each of its employees. The payroll submitted shall set out accurately and completely all of the information required to be maintained. 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. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
That the payroll for the payroll period contains the information required to be maintained and that such information is correct and complete; That such laborer or mechanic 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 the Regulations, 29 CFR 3; That each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract. 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".

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