



Request for Qualifications for Choice Neighborhoods Planning Grant Partner

RFQ1025/2023: Planning Grant Writing Services

Publication of Request: November 21, 2023, at 12:00pm (CST)

Submission of Response Deadline: December 27, 2023, at 12:00pm (CST)

The Housing Authority of Joliet (HAJ), in partnership with the City of Joliet, and its instrumentality entities d/b/a Hope Bound Development Corp. ("HBDC") seeks proposals from interested and qualified individuals and companies who have experience with grant writing and planning activities related to assembling competitive application for a Choice Neighborhoods Planning Grant. The initiation of required services shall be prior to award of the grant and shall include preparation for any applicable grant submissions. Operation as a Planning Coordinator for the Implementation of the Choice Neighborhoods Planning Grant shall be contingent upon receiving the grant. Planning services may include but not be limited to preparation of documents and applications concerning Section 18 Demolition/Disposition, RAD, new construction, rehabilitation applications. HAP will only consider qualified individuals or businesses that possess the professional, financial, and administrative capabilities to provide the required services necessary to receive and execute an award. HAP reserves the right to negotiate compensation and all contract terms and conditions with the awarded contractor.

The scope of work must address all necessary labor, materials, equipment, transportation, and supervision necessary to complete the process. The Respondents to the RFQ are expected to provide the services outlined below and provide HAJ with a detailed analysis and methodology to manage the following Scope of Work:

SCOPE OF WORK: Housing Authority of Joliet is seeking responses from an experienced professional or team of professionals to facilitate the development of a CNI Planning Grant application for 2024. Contractor(s) shall conduct the facilitation and render the results in a formal report and present the same to the Executive staff and Board of Commissioners at the [6 South Broadway St. Joliet, Illinois 60436] as specified herein. Specific items are detailed in the specifications contained herein.

The Housing Authority of Joliet is seeking an Urban Planning Firm or other Planning or Development Entity to operate and facilitate efforts for applying and pursuing a CNI Planning Grant for all remaining assets located in Joliet. HAJ understands and anticipates that additional development partners will be necessary at later phases post-award. This RFQ and scope focuses on the planning award that will facilitate the future direction of the senior (s) developments. As well as other housing authorities' properties. Capacity to perform work under an Intergovernmental Agreement with other public housing authorities.

Intergovernmental Agreements (IGAs) are widely used by housing authorities. They are permitted (and favored) by HUD, as well as Illinois laws. In fact, the HAJ has a pending agreement with Paducah Housing Authority (PHA) currently to assist and perform development activity at PHA properties. We want to pursue a planning grant for the same.

<i>NAME</i>	<i>PROJECT NUMBER</i>	<i>NUMBER OF UNITS</i>	<i>LOCATION</i>
Fairview Housing Community	AMP 3	Brownfield	Cardinal and Robin Lane; Englewood, Fairmont, Juniper, and Rosalind Streets
Heritage Place	AMP 4	174	400, 401, 407, 411, 415, 419 and 420 Bluff Street
John C. Murphy Building	AMP 6	For sale	311 North Ottawa Street
Des Plaines Gardens	AMP 6	40	Allen, Dekalb, Des Plaines, Joliet, and Wallace Streets
John F. Kennedy Terrace	AMP 7	173	2200 Oneida Street
Adlai Stevenson Gardens	AMP 8	(RAD)	102 Stryker Avenue
Liberty Meadow Estates, Phase II	AMP 11	11	Southwest Corner of Briggs & Rosalind Streets

Qualified **Respondents** will have the following experience and expertise:

- Experience with HUD Choice Neighborhoods Planning Grants
- Experience with HUD Choice Neighborhoods Implementation Grants
- Experience with HUD Repositioning programs including but not limited to Section 18 Demolition/Disposition, RAD, and Mixed-Finance transactions.
- Expertise on HUD regulations and grant requirements
- Experience in writing and receiving competitive grant awards.
- Expertise spearheading and leading planning and visioning processes through brainstorming sessions, charettes, community input meetings, and stakeholder engagement
- Experience in engaging and collaborating with residents including resident councils, boards, and unions.
- Expertise in working with architects, third-party consultants, and affordable housing developers in planning for new construction and/or rehabilitation projects. Planning includes securing third-party due diligence reports required for submission.
- Expertise in developing urban planning strategies and budgeting.
- Expertise in affordable housing development and finance programs such as the Low-Income Housing Tax Credit Program (LIHTC), Private Activity Tax-Exempt Bonds, Home Investment Partnership Program (HOME), Community Development Block Grant Program (CDBG), and other relevant affordable housing programs.
- Experience creating workable plans based on community input and stakeholder engagement.
- Experience engaging and collaborating with various target audiences such as civic organizations, government agencies, businesses, and interested community groups.

The selected Contractor will report directly to the ED and will assist the organization in the necessary processes to complete a CNI Planning Grant application within the desired and agreed upon timeline.

The **Contractor** will be responsible for the following:

- Working with HAJ and the City of Joliet to spearhead planning efforts.
- Providing comprehensive services related to organization, planning, writing, and submission of a planning grant application.
- Reviewing grant application guidelines and preparing a chart of tasks to be completed by each person and dates in which tasks need to be completed by
- Attending and coordinating meetings with stakeholders including HAJ's selected Co-Developer.
- Working responsibly with HAJ staff on securing required documentation for planning grant application
- Securing all necessary approvals in consultation with HAJ leadership
- Preparing and writing all sections of the grant application in response to the NOFA, meeting all NOFA thresholds, risk factor and/or criteria requirements; deadlines, layout and page counts to submit a successful CNI application.
- Fully addressing all elements required by the NOFA in the application.
- Establishing a timeline for when the draft application will be provided to HAJ for review prior to submission. Including the deadline for when comments from HAJ and partners shall be received by
- Ensuring application meets or exceeds the expectations of HAJ and HUD to the greatest extent possible.
- Preparing final grant application documentation and submitting it to HAJ and HUD prior to grant application deadline as defined in the CNI Planning Grant NOFA.

In addition to the specifications and requirements above, the following general specifications

apply for the Contractor selected to work under this RFQ:

- The Contractor will supply all materials and equipment necessary to complete the task.
- The Contractor will provide a services schedule that is acceptable to HAJ. Required meetings of HAJ must take place during regular business hours of 8:00am and 4:30pm (Monday – Friday). Unless otherwise requested and agreed upon.
- The Contractor shall respect the privacy of all residents and members of the community. Onsite hours, including visits and meetings, shall be conducted at reasonable hours. All information regarding personal information regarding residents is privileged information and should be protected.
- The Contractor is responsible for any workers or subcontractors it has onsite and regarding the application process. Subcontractors shall be vetted in advance with HAP prior to contract execution and onsite visits.
- The Contractor and its subcontractors shall abide by HAJ policies while on premises, including the Smoke Free Policy.
- The Contractor and its subcontractors shall have all applicable licenses/permits, as required by local, state, and federal law.
- All materials and labor will be the responsibility of the Contractor. All costs incurred, directly or indirectly by the Respondent including travel, preparation, submission, and miscellaneous expenses in response to this RFP are the sole responsibility of the Respondent and, as such, shall be borne solely by the Respondent.

Required Experience: Respondents should demonstrate extensive experience producing strategic plans for large, complex organizations, facilitating both small and large group activities, and collaborating with a diverse range of community stakeholders. Respondents should have experience creating strategic plans using an asset-based strategic planning approach.

This Scope of Work is used to gain an understanding of Respondent services and costs and may not be the full scope of a future contract with chosen Respondent.

Responses should be provided via email to [insert email] as one document containing the

below documents. Documents should clearly identify each section to facilitate quick reference and comparison to the material submitted by other respondents. Brevity will be appreciated. Responses should address all items requested in this RFQ including, but not limited to, the following:

A. Letter of Transmittal:

1. Include a letter of transmittal bearing the signature of an authorized representative of the respondent and the name and email address of the individual authorized to negotiate services and costs with the HAJ.

B. Tab 1—Vendor Information:

1. Provide general information that best represents the respondent's company.
2. Describe those factors that differentiate the respondent's service from other such vendors.
3. Provide proof that the respondent has at least \$500,000 of General

Liability, \$500,000 of Automobile Liability and \$1,000,000 of Professional Liability Insurance, including errors and omissions.

4. Affirm that your organization is properly licensed to perform this type of service in the State of Indiana.

C. Tab 2—Capacity to Provide Professional Services in a Timely Manner:

1. Describe the methodology that the respondent proposes to provide the services described in the Scope of Work. Include information on proposed staffing and the equipment that will be needed to provide these services.
2. Describe the specific deliverables that the respondent will provide supported by a timeline for providing these deliverables.
3. State whether your organization is national, regional, or local. State the local address of your firm.

D. Tab 3—Staff Experience and Organization:

1. Show the experience of the key personnel anticipated to be assigned to this project relative to projects of similar size and nature. (Experience with public housing authorities is essential.) Specifically, show the experience that these key personnel have been working with each other on previous projects.
2. Provide a staffing plan of who will be responsible for the specific tasks identified in the Scope of Work.

E. Tab 4—Organizational Experience:

1. Demonstrate the respondent's experience in projects similar in scope and complexity as described in this solicitation within the last five (5) years.

F. Tab 5—Submission of Required Documents:

1. Provide at least five references for the recent projects that are like the services requested in this RFQ. Provide name of point of contact, entity, telephone number, and title of references.

G. Tab 6—Section 3:

1. Preference points will be given to any respondent that can attest to being a Section 3, MBE or WBE Business Entity. Please provide an Employee listing if Section 3 is applicable.

RESPONSE EVALUATION:

1. Evaluation Factors: The following factors will be utilized by HAJ's Staff to evaluate each Response submittal received; award of points for each listed factor will be based upon the documentation that the respondent submits within his/her Response submittal:

NO.	Max Point Value	Factor Type	Factor Description
1.	15	Objective	the PROPOSED COSTS the respondent proposes to charge to complete the required work.
2.	15	Subjective	The respondent's DEMONSTRATED UNDERSTANDING of the REQUIREMENT;
3.	10	Subjective	the APPROPRIATENESS of the TECHNICAL APPROACH (including labor categories, estimated hours, and skill mix) and the QUALITY of the WORK PLAN
4.	20	Subjective	The respondent's TECHNICAL CAPABILITIES (in terms of personnel, equipment, and materials) and the MANAGEMENT PLAN (including staffing of key positions, method of assigning work and procedures for maintaining the level of service, etc.). Capacity to perform work under Intergovernmental Agreement (IGA) with another public Housing Authority.
5.	35	Subjective	The respondent's DEMONSTRATED EXPERIENCE in performing similar work and the respondent has DEMONSTRATED SUCCESSFUL PAST PERFORMANCE (including meeting costs, schedules, and performance requirements) of contract works substantially like that required by this solicitation as verified by reference checks or other means.
6.	5	Subjective	the OVERALL QUALITY AND PROFESSIONAL APPEARANCE OF THE RESPONSE SUBMITTED, based upon the opinion of the evaluators.
100 POINTS TOTAL POINTS (other than preference points)			

1.1 Preference Evaluation Factor: The following factors will be utilized to evaluate each Response submittal received:

NO.	Max Point Value	Factor Type	Factor Description
7.	5	Points Objective	SECTION 3 BUSINESS PREFERENCE PARTICIPATION: A firm must qualify for Section 3 status.
7a.	5	Points Objective	MBE PREFERENCE PARTICIPATION: A firm must qualify for MBE status.
7b.	5	Points Objective	WBE PREFERENCE PARTICIPATION: A firm must qualify for WBE status. Question: Can you add SBE for 5 pts total 120pts
15		POINTS MAXIMUM	PREFERENCE POINTS (additional)

115 TOTAL POSSIBLE POINTS

Housing Authority of Joliet (HAJ) RESERVATION OF RIGHTS:

Definitions:

Respondent – Company or individual responding to the RFQ

Contractor – Company or individual who is awarded the contract.

HAJ reserves the right to:

1. HAJ reserves the right to reject any or all Responses, to waive any informality in the RFQ process, or to terminate the RFQ process at any time, if deemed by the HAJ to be in its best interests.
2. HAJ reserves the right not to award a contract pursuant to this RFQ.
3. HAJ reserves the right to terminate a contract awarded pursuant to this RFQ, at any time for its convenience upon fourteen (14) days written notice to the successful Respondent(s).
4. HAJ reserves the right to determine the days, hours, and locations that the successful Respondent(s) shall provide the services called for in this RFQ.
5. HAJ reserves the right to retain all Responses submitted and not permit withdrawal for a period of sixty (60) days after the deadline for receiving Responses without the written consent of the HAJ's Contract Administrator (CA).
6. HAJ reserves the right to negotiate the fees proposed by the Respondent entity. If such negotiations are not, in the opinion of HAJ's CA, successfully concluded within a reasonable timeframe as determined by HAJ, HAJ shall retain the right to end such negotiations.
7. HAJ reserves the right to reject and not consider any Response that does not meet the requirements of this RFQ, including but not necessarily limited to incomplete Responses and/or Responses offering alternate or non-requested services.
8. HAJ shall have no obligation to compensate any Respondent for any costs incurred in responding to this RFQ.
9. HAJ shall reserve the right to at any time during the RFQ or contract process to prohibit any further participation by a respondent or reject any Response submitted that does not conform to any of the requirements detailed herein. Each prospective respondent further agrees that he/she will inform HAJ CA in writing within five (5) days of the discovery of any item that is issued thereafter by CEO that he feels needs to be addressed. Failure to abide by this timeframe shall relieve HAJ, but not the prospective respondent, of any responsibility pertaining to such an issue.
10. HAJ reserves the right, prior to award, to revise, change, alter or amend any of the

instructions, terms, conditions, and/or specifications identified within the RFQ documents issued, within any attachment or drawing, or within any addenda issued. All addenda will be posted on HAJ's website www.haj.org under Business Opportunities. Such changes that are issued before the Response submission deadline shall be binding upon all prospective respondents.

11. In the case of rejection of all Responses, HAJ reserves the right to advertise for new Responses or to proceed to do the work otherwise, if in the judgment of HAJ, the best interest of HAJ will be promoted.

12. HAJ reserves the right to, without any liability; cancel the award of any Response(s) at any time before the execution of the contract documents by all parties.

13. HAJ reserves the right to reduce or increase estimated or actual quantities in whatever amount necessary without prejudice or liability to HAJ, if:

13.1 Funding is not available,

13.2 Legal restrictions are placed upon the expenditure of monies for this category of service or supplies: or,

13.3 HAJ's requirements in good faith change after award of the contract.

14. HAJ reserves the right to make an award to more than one respondent based on ratings and to award with or without negotiations or a "Best and Final Offer" (BAFO).

15. HAJ reserves the right to request additional information from all respondents to determine the level of responsibility. Such information shall be submitted in the form required by HAJ within two (2) days of written request.

16. HAJ reserves the right to amend the contract any time prior to contract execution.

17. HAJ reserves the right to require the Contractor to keep accurate timesheets for all employees assigned to perform any project, task, or assignment resulting from this RFQ and any resulting contract.

18. HAJ reserves the right to contact any individuals, entities, or organizations that have had a business relationship with the respondent regardless of their inclusion in the reference section of the Response submittal.

19. In the event any resulting contract is breached, prematurely terminated or canceled due to non-performance and/or withdrawal by the Contractor, HAJ reserves the right to seek monetary restitution (to include but not limited to withholding of monies owed) from the Contractor to cover costs for interim services and/or cover the difference of a higher cost (difference between existing Contracted rate and new Contract rate) beginning the date of Contractor's termination, breach and/or cancellation through the contract expiration date. 20. HAJ reserves the right to require the Contractor to replace any employee, subcontractor, or other individuals and/or entities, found to be unacceptable, performing work under any contract resulting from this RFQ. Replacement shall occur within two (2) days of notification by Housing Authority of Joliet.

The contact person will be [Michael Simelton]. He can be contacted at 8157270611 ext., 150 or via email at [mSimelton@hajoliet.org].

List of Forms

The following forms are referenced in this handbook:

HUD-2516	“Contract and Subcontract Activity Report”
HUD-5369	“Instructions to Bidders for Contracts”
HUD-5369-A	“Representations, Certifications, and Other Statements of Bidders”
HUD-5369-B	“Instructions to Offerors-Non-Construction”
HUD-5370	“General Conditions of the Contract for Construction”
HUD-5370-C	“General Contract Conditions for Non-Construction Contracts”
HUD-5370-EZ	“General Conditions of the Contract for Small Construction/Development Contracts”
HUD-5372	“Construction Progress Schedule”
HUD-51000	“Schedule of Amounts for Contract Payments”
HUD-51001	“Periodic Estimate for Partial Payment”
HUD-51002	“Schedule of Change Orders”
HUD-51003	“Schedule of Materials Stored”
HUD-51004	“Summary of Materials Stored”
HUD-51915	“Model Form of Agreement Between Owner and Design Professional”
HUD-51915-A	“Contract Provisions Required by Federal Law or Owner Contract with the U.S. Department of Housing and Urban Development”
HUD-52158	“Maintenance Wage Rate Determinations”
HUD-53010	“Low-Rent Public Housing Annual Contributions Contract, Part I”
HUD-53011	“Low-Rent Public Housing Annual Contributions Contract, Part II”
HUD-53012-A	“Terms and Conditions”
HUD-60002	“Economic Opportunities for Low and Very Low-Income Persons”
WH-347	“Payroll”

Public Reporting Burden for this collection of information is estimated to average .50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This information is voluntary. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB Control Number.

Executive Order 12421 dated July 14, 1983, directs the Minority Business Development Plans shall be developed by each Federal Agency and that these annual plans shall establish minority business development objectives. The information is used by HUD to monitor and evaluate MBE activities against the total program activity and the designated minority business enterprise (MBE) goals. The Department requires the information to provide guidance and oversight for programs for the development of minority business enterprise concerning Minority Business Development. If the information is not collected HUD would not be able to establish meaningful MBE goals nor evaluate MBE performance against these goals. While no assurances of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information request.

Privacy Act Notice - The United States Department of Housing and Urban Development, Federal Housing Administration, is authorized to solicit the information requested in this form by virtue of Title 12, United States Code, Section 1701 et seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. It will not be disclosed or released outside the United States Department of Housing and Urban Development without your consent, except as required or permitted by law.

1. Grantee/Project Owner/Developer/Sponsor/Builder/Agency				Check if: PHA <input type="checkbox"/> IHA <input type="checkbox"/>		2. Location (City, State, ZIP Code)						
3a. Name of Contact Person				3b. Phone Number (Including Area Code)		4. Reporting Period <input type="checkbox"/> Oct. 1 - Sept. 30 (Annual-FY)			5. Program Code (Not applicable for CPD programs.) See explanation of codes at bottom of page. Use a separate sheet for each program code.		6. Date Submitted to Field Office	

Grant/Project Number or HUD Case Number or other identification of property, subdivision, dwelling unit, etc. 7a.	Amount of Contract or Subcontract 7b.	Type of Trade Code (See below) 7c.	Contractor or Subcontractor Business Racial/Ethnic Code (See below) 7d.	Woman Owned Business (Yes or No) 7e.	Prime Contractor Identification (ID) Number 7f.	Sec. 3 7g.	Subcontractor Identification (ID) Number 7h.	Sec. 3 7i.	Contractor/Subcontractor Name and Address 7j.				
									Name	Street	City	State	Zip Code

CPD:
1 = New Construction
2 = Education/Training
3 = Other

7c: Type of Trade Codes:
Housing/Public Housing:
1 = New Construction
2 = Substantial Rehab.
3 = Repair
4 = Service
5 = Project Mangt.

7d: Racial/Ethnic Codes:
1 = White Americans
2 = Black Americans
3 = Native Americans
4 = Hispanic Americans
5 = Asian/Pacific Americans
6 = Hasidic Jews

5: Program Codes (Complete for Housing and Public and Indian Housing programs only):
1 = All insured, including Section 8
2 = Flexible Subsidy
3 = Section 8 Noninsured, Non-HFDA
4 = Insured (Management)
5 = Section 202
6 = HUD-Held (Management)
7 = Public/Indian Housing

This report is to be completed by grantees, developers, sponsors, builders, agencies, and/or project owners for reporting contract and subcontract activities of \$10,000 or more under the following programs: Community Development Block Grants (entitlement and small cities); Urban Development Action Grants; Housing Development Grants; Multifamily Insured and Noninsured; Public and Indian Housing Authorities; and contracts entered into by recipients of CDBG rehabilitation assistance.

Contracts/subcontracts of less than \$10,000 need be reported only if such contracts represent a significant portion of your total contracting activity. Include only contracts executed during this reporting period.

This form has been modified to capture Section 3 contract data in columns 7g and 7i. Section 3 requires that the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. Recipients using this form to report Section 3 contract data must also use Part I of form HUD-60002 to report employment and training opportunities data. Form HUD-2516 is to be

completed for public and Indian housing and most community development programs. Form HUD-60002 is to be completed by all other HUD programs including State administered community development programs covered under Section 3.

A Section 3 contractor/subcontractor is a business concern that provides economic opportunities to low- and very low-income residents of the metropolitan area (or nonmetropolitan county), including a business concern that is 51 percent or more owned by low- or very low-income residents; employs a substantial number of low- or very low-income residents; or provides subcontracting or business development opportunities to businesses owned by low- or very low-income residents. Low- and very low-income residents include participants in Youthbuild programs established under Subtitle D of Title IV of the Cranston-Gonzalez National Affordable Housing Act.

The terms “low-income persons” and “very low-income persons” have the same meanings given the terms in section 3(b)(2) of the United States Housing Act of 1937. Low-income persons mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary

may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary’s findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families. Very low-income persons means low-income families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary’s findings that such variations are necessary because of unusually high or low family incomes.

Submit two (2) copies of this report to your local HUD Office within ten (10) days after the end of the reporting period you checked in item 4 on the front.

Complete item 7h. only once for each contractor/subcontractor on each semi-annual report.

Enter the prime contractor's ID in item 7f. for all contracts and subcontracts. Include only contracts executed during this reporting period. PHAs/IHAs are to report all contracts/subcontracts.

Community Development Programs

- 1. **Grantee:** Enter the name of the unit of government submitting this report.
- 3. **Contact Person:** Enter name and phone of person responsible for maintaining and submitting contract/subcontract data.
- 7a. **Grant Number:** Enter the HUD Community Development Block Grant Identification Number (with dashes). For example: B-32-MC-25-0034. For Entitlement Programs and Small City multi-year comprehensive programs, enter the latest approved grant number.
- 7b. **Amount of Contract/Subcontract:** Enter the dollar amount rounded to the nearest dollar. If subcontractor ID number is provided in 7f, the dollar figure would be for the subcontract only and not for the prime contract.
- 7c. **Type of Trade:** Enter the numeric codes which best indicates the contractor's/ subcontractor's service. If subcontractor ID number is provided in 7f., the type of trade code would be for the subcontractor only and not for the prime contractor. The "other" category includes supply, professional services and all other activities except construction and education/training activities.
- 7d. **Business Racial/Ethnic/Gender Code:** Enter the numeric code which indicates the racial/ethnic /gender character of the owner(s) and controller(s) of 51% of the business. When 51% or more is not owned and controlled by any single racial/ethnic/ gender category, enter the code which seems most appropriate. If the subcontractor ID number is provided, the code would apply to the subcontractor and not to the prime contractor.
- 7e. **Woman Owned Business:** Enter Yes or No.
- 7f. **Contractor Identification (ID) Number:** Enter the Employer (IRS) Number of the Prime Contractor as the unique identifier for prime recipient of HUD funds. Note that the Employer (IRS) Number must be provided for each contract/subcontract awarded.
- 7g. **Section 3 Contractor:** Enter Yes or No.
- 7h. **Subcontractor Identification (ID) Number:** Enter the Employer (IRS) Number of the subcontractor as the unique identifier for each subcontract awarded from HUD funds. When the subcontractor ID Number is provided, the respective Prime Contractor ID Number must also be provided.
- 7i. **Section 3 Contractor:** Enter Yes or No.
- 7j. **Contractor/Subcontractor Name and Address:** Enter this information for each

Previous editions are obsolete.

firm receiving contract/subcontract activity only one time on each report for each firm.

Multifamily Housing Programs

- 1. **Grantee/Project Owner:** Enter the name of the unit of government, agency or mortgagor entity submitting this report.
- 3. **Contact Person:** Same as item 3 under CPD Programs.
- 4. **Reporting Period:** Check only one period.
- 5. **Program Code:** Enter the appropriate program code.
- 7a. **Grant/Project Number:** Enter the HUD Project Number or Housing Development Grant or number assigned.
- 7b. **Amount of Contract/Subcontract:** Same as item 7b. under CPD Programs.
- 7c. **Type of Trade:** Same as item 7c. under CPD Programs.
- 7d. **Business Racial/Ethnic/Gender Code:** Same as item 7d. under CPD Programs.
- 7e. **Woman Owned Business:** Enter Yes or No.
- 7f. **Contractor Identification (ID) Number:** Same as item 7f. under CPD Programs.
- 7g. **Section 3 Contractor:** Enter Yes or No.
- 7h. **Subcontractor Identification (ID) Number:** Same as item 7h. under CPD Programs.
- 7i. **Section 3 Contractor:** Enter Yes or No.
- 7j. **Contractor/Subcontractor Name and Address:** Same as item 7j. under CPD Programs.

Public Housing and Indian Housing Programs

PHAs/IHAs are to report all contracts/subcontracts. Include only contracts executed during this reporting period.

- 1. **Project Owner:** Enter the name of the unit of government, agency or mortgagor entity submitting this report. Check box as appropriate.
- 3. **Contact Person:** Same as item 3 under CPD Programs.
- 4. **Reporting Period:** Check only one period.
- 5. **Program Code:** Enter the appropriate program code.
- 7a. **Grant/Project Number:** Enter the HUD Project Number or Housing Development Grant or number assigned.
- 7b. **Amount of Contract/Subcontract:** Same as item 7b. under CPD Programs.
- 7c. **Type of Trade:** Same as item 7c. under CPD Programs.
- 7d. **Business Racial/Ethnic/Gender Code:** Same as item 7d. under CPD Programs.
- 7e. **Woman Owned Business:** Enter Yes or No.
- 7f. **Contractor Identification (ID) Number:** Same as item 7f. under CPD Programs.
- 7g. **Section 3 Contractor:** Enter Yes or No.
- 7h. **Subcontractor Identification (ID) Number:** Same as item 7h. under CPD Programs.
- 7i. **Section 3 Contractor:** Enter Yes or No.
- 7j. **Contractor/Subcontractor Name and Address:** Same as item 7j. under CPD Programs.

**U.S. Department of Housing and
Urban Development**
Office of Public and Indian Housing

**Instructions to Bidders for Contracts
Public and Indian Housing Programs**

Instructions to Bidders for Contracts

Public and Indian Housing Programs

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1. Bid Preparation and Submission

(a) Bidders are expected to examine the specifications, drawings, all instructions, and, if applicable, the construction site (see also the contract clause entitled **Site Investigation and Conditions Affecting the Work** of the *General Conditions of the Contract for Construction*). Failure to do so will be at the bidders' risk.

(b) All bids must be submitted on the forms provided by the Public Housing Agency/Indian Housing Authority (PHA/IHA). Bidders shall furnish all the information required by the solicitation. Bids must be signed and the bidder's name typed or printed on the bid sheet and each continuation sheet which requires the entry of information by the bidder. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority. (Bidders should retain a copy of their bid for their records.)

(c) Bidders must submit as part of their bid a completed form HUD-5369-A, "Representations, Certifications, and Other Statements of Bidders."

(d) All bid documents shall be sealed in an envelope which shall be clearly marked with the words "Bid Documents," the Invitation for Bids (IFB) number, any project or other identifying number, the bidder's name, and the date and time for receipt of bids.

(e) If this solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words "No Bid" in the space provided for any item on which no price is submitted.

(f) Unless expressly authorized elsewhere in this solicitation, alternate bids will not be considered.

(g) Unless expressly authorized elsewhere in this solicitation, bids submitted by telegraph or facsimile (fax) machines will not be considered.

(h) If the proposed contract is for a Mutual Help project (as described in 24 CFR Part 905, Subpart E) that involves Mutual Help contributions of work, material, or equipment, supplemental information regarding the bid advertisement is provided as an attachment to this solicitation.

2. Explanations and Interpretations to Prospective Bidders

(a) Any prospective bidder desiring an explanation or interpretation of the solicitation, specifications, drawings, etc., must request it at least 7 days before the scheduled time for bid opening. Requests may be oral or written. Oral requests must be confirmed in writing. The only oral clarifications that will be provided will be those clearly related to solicitation procedures, i.e., not substantive technical information. No other oral explanation or interpretation will be provided. Any information given a prospective bidder concerning this solicitation will be furnished promptly to all other prospective bidders as a written amendment to the solicitation, if that information is necessary in submitting bids, or if the lack of it would be prejudicial to other prospective bidders.

(b) Any information obtained by, or provided to, a bidder other than by formal amendment to the solicitation shall not constitute a change to the solicitation.

3. Amendments to Invitations for Bids

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date on the bid form, or (3) by letter, telegram, or facsimile, if those methods are authorized in the solicitation. The PHA/IHA must receive acknowledgement by the time and at the place specified for receipt of bids. Bids which fail to acknowledge the bidder's receipt of any amendment will result in the rejection of the bid if the amendment(s) contained information which substantively changed the PHA's/IHA's requirements.

(c) Amendments will be on file in the offices of the PHA/IHA and the Architect at least 7 days before bid opening.

4. Responsibility of Prospective Contractor

(a) The PHA/IHA will award contracts only to responsible prospective contractors who have the ability to perform successfully under the terms and conditions of the proposed contract. In determining the responsibility of a bidder, the PHA/IHA will consider such matters as the bidder's:

- (1) Integrity;
- (2) Compliance with public policy;
- (3) Record of past performance; and
- (4) Financial and technical resources (including construction and technical equipment).

(b) Before a bid is considered for award, the bidder may be requested by the PHA/IHA to submit a statement or other documentation regarding any of the items in paragraph (a) above. Failure by the bidder to provide such additional information shall render the bidder nonresponsible and ineligible for award.

5. Late Submissions, Modifications, and Withdrawal of Bids

(a) Any bid received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it:

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the PHA/IHA that the late receipt was due solely to mishandling by the PHA/IHA after receipt at the PHA/IHA; or

(3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and observed holidays.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) of this provision.

(c) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the bid, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, bidders should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(d) The only acceptable evidence to establish the time of receipt at the PHA/IHA is the time/date stamp of PHA/IHA on the proposal wrapper or other documentary evidence of receipt maintained by the PHA/IHA.

(e) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, bidders should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and Failure by a bidder to acknowledge receipt of the envelope or wrapper.

(f) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful bid that makes its terms more favorable to the PHA/IHA will be considered at any time it is received and may be accepted.

(g) Bids may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before the exact time set for opening of bids; provided that written confirmation of telegraphic or facsimile withdrawals over the signature of the bidder is mailed and postmarked prior to the specified bid opening time. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

6. Bid Opening

All bids received by the date and time of receipt specified in the solicitation will be publicly opened and read. The time and place of opening will be as specified in the solicitation. Bidders and other interested persons may be present.

7. Service of Protest

(a) Definitions. As used in this provision:

"Interested party" means an actual or prospective bidder whose direct economic interest would be affected by the award of the contract.

"Protest" means a written objection by an interested party to this solicitation or to a proposed or actual award of a contract pursuant to this solicitation.

(b) Protests shall be served on the Contracting Officer by obtaining written and dated acknowledgement from —

[Contracting Officer designate the official or location where a protest may be served on the Contracting Officer]

(c) All protests shall be resolved in accordance with the PHA's/IHA's protest policy and procedures, copies of which are maintained at the PHA/IHA.

8. Contract Award

(a) The PHA/IHA will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the PHA/IHA considering only price and any price-related factors specified in the solicitation.

(b) If the apparent low bid received in response to this solicitation exceeds the PHA's/IHA's available funding for the proposed contract work, the PHA/IHA may either accept separately priced items (see 8(e) below) or use the following procedure to determine contract award. The PHA/IHA shall apply in turn to each bid (proceeding in order from the apparent low bid to the high bid) each of the separately priced bid deductible items, if any, in their priority order set forth in this solicitation. If upon the application of the first deductible item to all initial bids, a new low bid is within the PHA's/IHA's available funding, then award shall be made to that bidder. If no bid is within the available funding amount, then the PHA/IHA shall apply the second deductible item. The PHA/IHA shall continue this process until an evaluated low bid, if any, is within the PHA's/IHA's available funding. If upon the application of all deductibles, no bid is within the PHA's/IHA's available funding, or if the solicitation does not request separately priced deductibles, the PHA/IHA shall follow its written policy and procedures in making any award under this solicitation.

(c) In the case of tie low bids, award shall be made in accordance with the PHA's/IHA's written policy and procedures.

(d) The PHA/IHA may reject any and all bids, accept other than the lowest bid (e.g., the apparent low bid is unreasonably low), and waive informalities or minor irregularities in bids received, in accordance with the PHA's/IHA's written policy and procedures.

(e) Unless precluded elsewhere in the solicitation, the PHA/IHA may accept any item or combination of items bid.

(f) The PHA/IHA may reject any bid as nonresponsive if it is materially unbalanced as to the prices for the various items of work to be performed. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(g) A written award shall be furnished to the successful bidder within the period for acceptance specified in the bid and shall result in a binding contract without further action by either party.

9. Bid Guarantee (applicable to construction and equipment contracts exceeding \$25,000)

All bids must be accompanied by a negotiable bid guarantee which shall not be less than five percent (5%) of the amount of the bid. The bid guarantee may be a certified check, bank draft, U.S. Government Bonds at par value, or a bid bond secured by a surety company acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. In the case where the work under the contract will be performed on an Indian reservation area, the bid guarantee may also be an irrevocable Letter of Credit (see provision 10, Assurance of Completion, below). Certified checks and bank drafts must be made payable to the order of the PHA/IHA. The bid guarantee shall insure the execution of the contract and the furnishing of a method of assurance of completion by the successful bidder as required by the solicitation. Failure to submit a bid guarantee with the bid shall result in the rejection of the bid. Bid guarantees submitted by unsuccessful bidders will be returned as soon as practicable after bid opening.

10. Assurance of Completion

(a) Unless otherwise provided in State law, the successful bidder shall furnish an assurance of completion prior to the execution of any contract under this solicitation. This assurance may be [Contracting Officer check applicable items] —

[] (1) a performance and payment bond in a penal sum of 100 percent of the contract price; or, as may be required or permitted by State law;

[] (2) separate performance and payment bonds, each for 50 percent or more of the contract price;

[] (3) a 20 percent cash escrow;

[] (4) a 25 percent irrevocable letter of credit; or,

[] (5) an irrevocable letter of credit for 10 percent of the total contract price with a monitoring and disbursements agreement with the IHA (applicable only to contracts awarded by an IHA under the Indian Housing Program).

(b) Bonds must be obtained from guarantee or surety companies acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. Individual sureties will not be considered. U.S. Treasury Circular Number 570, published annually in the Federal Register, lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies listed in this circular is mandatory. Copies of the circular may be downloaded on the U.S. Department of Treasury website <http://www.fms.treas.gov/c570/index.html>, or ordered for a minimum fee by contacting the Government Printing Office at (202) 512-2168.

(c) Each bond shall clearly state the rate of premium and the total amount of premium charged. The current power of attorney for the person who signs for the surety company must be attached to the bond. The effective date of the power of attorney shall not precede the date of the bond. The effective date of the bond shall be on or after the execution date of the contract.

(d) Failure by the successful bidder to obtain the required assurance of completion within the time specified, or within such extended period as the PHA/IHA may grant based upon reasons determined adequate by the PHA/IHA, shall render the bidder ineligible for award. The PHA/IHA may then either award the contract to the next lowest responsible bidder or solicit new bids. The PHA/IHA may retain the ineligible bidder's bid guarantee.

11. Preconstruction Conference (applicable to construction contracts)

After award of a contract under this solicitation and prior to the start of work, the successful bidder will be required to attend a preconstruction conference with representatives of the PHA/IHA and its architect/engineer, and other interested parties convened by the PHA/IHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract (e.g., Equal Employment Opportunity, Labor Standards). The PHA/IHA will provide the successful bidder with the date, time, and place of the conference.

12. Indian Preference Requirements (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

(a) HUD has determined that the contract awarded under this solicitation is subject to the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) requires that any contract or subcontract entered into for the benefit of Indians shall require that, to the greatest extent feasible

(1) Preferences and opportunities for training and employment (other than core crew positions; see paragraph (h) below) in connection with the administration of such contracts or subcontracts be given to qualified "Indians." The Act defines "Indians" to mean persons who are members of an Indian tribe and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and,

(2) Preference in the award of contracts or subcontracts in connection with the administration of contracts be given to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452). That Act defines "economic enterprise" to mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that the Indian ownership must constitute not less than 51 percent of the enterprise; "Indian organization" to mean the governing body of any Indian tribe or entity established or recognized by such governing body; "Indian" to mean any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act; and Indian "tribe" to mean any Indian tribe, band, group, pueblo, or community including Native villages and Native groups (including

corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

(b) (1) The successful Contractor under this solicitation shall comply with the requirements of this provision in awarding all subcontracts under the contract and in providing training and employment opportunities.

(2) A finding by the IHA that the contractor, either (i) awarded a subcontract without using the procedure required by the IHA, (ii) falsely represented that subcontracts would be awarded to Indian enterprises or organizations; or, (iii) failed to comply with the contractor's employment and training preference bid statement shall be grounds for termination of the contract or for the assessment of penalties or other remedies.

(c) If specified elsewhere in this solicitation, the IHA may restrict the solicitation to qualified Indian-owned enterprises and Indian organizations. If two or more (or a greater number as specified elsewhere in the solicitation) qualified Indian-owned enterprises or organizations submit responsive bids, award shall be made to the qualified enterprise or organization with the lowest responsive bid. If fewer than the minimum required number of qualified Indian-owned enterprises or organizations submit responsive bids, the IHA shall reject all bids and readvertise the solicitation in accordance with paragraph (d) below.

(d) If the IHA prefers not to restrict the solicitation as described in paragraph (c) above, or if after having restricted a solicitation an insufficient number of qualified Indian enterprises or organizations submit bids, the IHA may advertise for bids from non-Indian as well as Indian-owned enterprises and Indian organizations. Award shall be made to the qualified Indian enterprise or organization with the lowest responsive bid if that bid is -

(1) Within the maximum HUD-approved budget amount established for the specific project or activity for which bids are being solicited; and

(2) No more than the percentage specified in 24 CFR 905.175(c) higher than the total bid price of the lowest responsive bid from any qualified bidder. If no responsive bid by a qualified Indian-owned economic enterprise or organization is within the stated range of the total bid price of the lowest responsive bid from any qualified enterprise, award shall be made to the bidder with the lowest bid.

(e) Bidders seeking to qualify for preference in contracting or subcontracting shall submit proof of Indian ownership with their bids. Proof of Indian ownership shall include but not be limited to:

(1) Certification by a tribe or other evidence that the bidder is an Indian. The IHA shall accept the certification of a tribe that an individual is a member.

(2) Evidence such as stock ownership, structure, management, control, financing and salary or profit sharing arrangements of the enterprise.

(f) (1) All bidders must submit with their bids a statement describing how they will provide Indian preference in the award of subcontracts. The specific requirements of that statement and the factors to be used by the IHA in determining the statement's adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement shall be rejected as nonresponsive. The IHA may require that comparable statements be provided by subcontractors to the successful Contractor, and may require the Contractor to reject any bid or proposal by a subcontractor that fails to include the statement.

(2) Bidders and prospective subcontractors shall submit a certification (supported by credible evidence) to the IHA in any instance where the bidder or subcontractor believes it is infeasible to provide Indian preference in subcontracting. The acceptance or rejection by the IHA of the certification shall be final. Rejection shall disqualify the bid from further consideration.

(g) All bidders must submit with their bids a statement detailing their employment and training opportunities and their plans to provide preference to Indians in implementing the contract; and the number or percentage of Indians anticipated to be employed and trained. Comparable statements from all proposed subcontractors must be submitted. The criteria to be used by the IHA in determining the statement(s)'s adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement(s), or that includes a statement that does not meet minimum standards required by the IHA shall be rejected as nonresponsive.

(h) Core crew employees. A core crew employee is an individual who is a bona fide employee of the contractor at the time the bid is submitted; or an individual who was not employed by the bidder at the time the bid was submitted, but who is regularly employed by the bidder in a supervisory or other key skilled position when work is available. Bidders shall submit with their bids a list of all core crew employees.

(i) Preference in contracting, subcontracting, employment, and training shall apply not only on-site, on the reservation, or within the IHA's jurisdiction, but also to contracts with firms that operate outside these areas (e.g., employment in modular or manufactured housing construction facilities).

(j) Bidders should contact the IHA to determine if any additional local preference requirements are applicable to this solicitation.

(k) The IHA [] does [] does not [Contracting Officer check applicable box] maintain lists of Indian-owned economic enterprises and Indian organizations by specialty (e.g., plumbing, electrical, foundations), which are available to bidders to assist them in meeting their responsibility to provide preference in connection with the administration of contracts and subcontracts.

**U.S. Department of Housing
and Urban Development**
Office of Public and Indian Housing

**Representations, Certifications,
and Other Statements of Bidders**
Public and Indian Housing Programs

Representations, Certifications, and Other Statements of Bidders

Public and Indian Housing Programs

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1. Certificate of Independent Price Determination

(a) The bidder certifies that--

(1) The prices in this bid have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to (i) those prices, (ii) the intention to submit a bid, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this bid have not been and will not be knowingly disclosed by the bidder, directly or indirectly, to any other bidder or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a competitive proposal solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the bidder to induce any other concern to submit or not to submit a bid for the purpose of restricting competition.

(b) Each signature on the bid is considered to be a certification by the signatory that the signatory--

(1) Is the person in the bidder's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

[insert full name of person(s) in the bidder's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the bidder deletes or modifies subparagraph (a)2 above, the bidder must furnish with its bid a signed statement setting forth in detail the circumstances of the disclosure.

[] [Contracting Officer check if following paragraph is applicable]

(d) Non-collusive affidavit. (applicable to contracts for construction and equipment exceeding \$50,000)

(1) Each bidder shall execute, in the form provided by the PHA/IHA, an affidavit to the effect that he/she has not colluded with any other person, firm or corporation in regard to any bid submitted in response to this solicitation. If the successful bidder did not submit the affidavit with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the affidavit by that date may render the bid nonresponsive. No contract award will be made without a properly executed affidavit.

(2) A fully executed "Non-collusive Affidavit" [] is, [] is not included with the bid.

2. Contingent Fee Representation and Agreement

(a) Definitions. As used in this provision:

"Bona fide employee" means a person, employed by a bidder and subject to the bidder's supervision and control as to time, place, and manner of performance, who neither exerts, nor proposes to exert improper influence to solicit or obtain contracts nor holds out as being able to obtain any contract(s) through improper influence.

"Improper influence" means any influence that induces or tends to induce a PHA/IHA employee or officer to give consideration or to act regarding a PHA/IHA contract on any basis other than the merits of the matter.

(b) The bidder represents and certifies as part of its bid that, except for full-time bona fide employees working solely for the bidder, the bidder:

(1) [] has, [] has not employed or retained any person or company to solicit or obtain this contract; and

(2) [] has, [] has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(c) If the answer to either (a)(1) or (a)(2) above is affirmative, the bidder shall make an immediate and full written disclosure to the PHA/IHA Contracting Officer.

(d) Any misrepresentation by the bidder shall give the PHA/IHA the right to (1) terminate the contract; (2) at its discretion, deduct from contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or (3) take other remedy pursuant to the contract.

3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (applicable to contracts exceeding \$100,000)

(a) The definitions and prohibitions contained in Section 1352 of title 31, United States Code, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The bidder, by signing its bid, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989 that:

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a contract resulting from this solicitation;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the bidder shall complete and submit, with its bid, OMB standard form LLL, "Disclosure of Lobbying Activities;" and

(3) He or she will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(d) Indian tribes (except those chartered by States) and Indian organizations as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) are exempt from the requirements of this provision.

4. Organizational Conflicts of Interest Certification

The bidder certifies that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work to be performed under this proposed contract and the bidder's organizational, financial, contractual, or other interests may, without some restriction on future activities:

- (a) Result in an unfair competitive advantage to the bidder; or,
- (b) Impair the bidder's objectivity in performing the contract work.

[] In the absence of any actual or apparent conflict, I hereby certify that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement.

5. Bidder's Certification of Eligibility

(a) By the submission of this bid, the bidder certifies that to the best of its knowledge and belief, neither it, nor any person or firm which has an interest in the bidder's firm, nor any of the bidder's subcontractors, is ineligible to:

(1) Be awarded contracts by any agency of the United States Government, HUD, or the State in which this contract is to be performed; or,

(2) Participate in HUD programs pursuant to 24 CFR Part 24.

(b) The certification in paragraph (a) above is a material representation of fact upon which reliance was placed when making award. If it is later determined that the bidder knowingly rendered an erroneous certification, the contract may be terminated for default, and the bidder may be debarred or suspended from participation in HUD programs and other Federal contract programs.

6. Minimum Bid Acceptance Period

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the PHA/IHA for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The PHA/IHA requires a minimum acceptance period of [Contracting Officer insert time period] calendar days.

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the PHA's/IHA's minimum requirement. The bidder allows the following acceptance period: calendar days.

(e) A bid allowing less than the PHA's/IHA's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above or (2) any longer acceptance period stated in paragraph (d) above.

7. Small, Minority, Women-Owned Business Concern Representation

The bidder represents and certifies as part of its bid/ offer that it --

(a) [] is, [] is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) [] is, [] is not a women-owned business enterprise. "Women-owned business enterprise," as used in this provision, means a business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

(c) [] is, [] is not a minority business enterprise. "Minority business enterprise," as used in this provision, means a business which is at least 51 percent owned or controlled by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are:

(Check the block applicable to you)

- | | |
|------------------------|------------------------------|
| [] Black Americans | [] Asian Pacific Americans |
| [] Hispanic Americans | [] Asian Indian Americans |
| [] Native Americans | [] Hasidic Jewish Americans |

8. Indian-Owned Economic Enterprise and Indian Organization Representation (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

The bidder represents and certifies that it:

(a) [] is, [] is not an Indian-owned economic enterprise. "Economic enterprise," as used in this provision, means any commercial, industrial, or business activity established or organized for the purpose of profit, which is at least 51 percent Indian owned. "Indian," as used in this provision, means any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act.

(b) [] is, [] is not an Indian organization. "Indian organization," as used in this provision, means the governing body of any Indian tribe or entity established or recognized by such governing body. Indian "tribe" means any Indian tribe, band, group, pueblo, or

community including Native villages and Native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

9. Certification of Eligibility Under the Davis-Bacon Act (applicable to construction contracts exceeding \$2,000)

(a) By the submission of this bid, the bidder certifies that neither it nor any person or firm who has an interest in the bidder's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of the contract resulting from this solicitation shall be subcontracted to any person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.

10. Certification of Nonsegregated Facilities (applicable to contracts exceeding \$10,000)

(a) The bidder's attention is called to the clause entitled **Equal Employment Opportunity** of the General Conditions of the Contract for Construction.

(b) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

(c) By the submission of this bid, the bidder certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The bidder agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in the contract.

(d) The bidder further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) prior to entering into subcontracts which exceed \$10,000 and are not exempt from the requirements of the Equal Employment Opportunity clause, it will:

(1) Obtain identical certifications from the proposed subcontractors;

(2) Retain the certifications in its files; and

(3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause of the prime contract. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

Note: The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

11. Clean Air and Water Certification (applicable to contracts exceeding \$100,000)

The bidder certifies that:

(a) Any facility to be used in the performance of this contract [] is, [] is not listed on the Environmental Protection Agency List of Violating Facilities:

(b) The bidder will immediately notify the PHA/IHA Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the bidder proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and,

(c) The bidder will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

12. Previous Participation Certificate (applicable to construction and equipment contracts exceeding \$50,000)

(a) The bidder shall complete and submit with his/her bid the Form HUD-2530, "Previous Participation Certificate." If the successful bidder does not submit the certificate with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the certificate by that date may render the bid nonresponsive. No contract award will be made without a properly executed certificate.

(b) A fully executed "Previous Participation Certificate" [] is, [] is not included with the bid.

13. Bidder's Signature

The bidder hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.

(Signature and Date)

(Typed or Printed Name)

(Title)

(Company Name)

(Company Address)

Instructions to Offerors Non-Construction

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing



- 03291 -

1. Preparation of Offers

(a) Offerors are expected to examine the statement of work, the proposed contract terms and conditions, and all instructions. Failure to do so will be at the offeror's risk.

(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the cover sheet and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the HA.

(c) Offers for services other than those specified will not be considered.

2. Submission of Offers

(a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation, and (2) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice.

(c) Facsimile offers, modifications or withdrawals will not be considered unless authorized by the solicitation.

3. Amendments to Solicitations

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Offerors shall acknowledge receipt of any amendments to this solicitation by

- (1) signing and returning the amendment;
- (2) identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer,
- (3) letter or telegram, or
- (4) facsimile, if facsimile offers are authorized in the solicitation. The HA/HUD must receive the acknowledgment by the time specified for receipt of offers.

4. Explanation to Prospective Offerors

Any prospective offeror desiring an explanation or interpretation of the solicitation, statement of work, etc., must request it in writing soon enough to allow a reply to reach all prospective offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offerors.

5. Responsibility of Prospective Contractor

(a) The HA shall award a contract only to a responsible prospective contractor who is able to perform successfully under the terms and conditions of the proposed contract. To be determined responsible, a prospective contractor must -

- (1) Have adequate financial resources to perform the contract, or the ability to obtain them;

- (2) Have a satisfactory performance record;
- (3) Have a satisfactory record of integrity and business ethics;
- (4) Have a satisfactory record of compliance with public policy (e.g., Equal Employment Opportunity); and
- (5) Not have been suspended, debarred, or otherwise determined to be ineligible for award of contracts by the Department of Housing and Urban Development or any other agency of the U.S. Government. Current lists of ineligible contractors are available for inspection at the HA/HUD.

(b) Before an offer is considered for award, the offeror may be requested by the HA to submit a statement or other documentation regarding any of the foregoing requirements. Failure by the offeror to provide such additional information may render the offeror ineligible for award.

6. Late Submissions, Modifications, and Withdrawal of Offers

(a) Any offer received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it -

- (1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
- (2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the HA/ HUD that the late receipt was due solely to mishandling by the HA/ HUD after receipt at the HA;
- (3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays; or
- (4) Is the only offer received.

(b) Any modification of an offer, except a modification resulting from the HA's request for "best and final" offer (if this solicitation is a request for proposals), is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.

(c) A modification resulting from the HA's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the HA after receipt at the HA.

(d) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the HA is the time/date stamp of HA on the offer wrapper or other documentary evidence of receipt maintained by the HA.

(f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the HA will be considered at any time it is received and may be accepted.

(h) If this solicitation is a request for proposals, proposals may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before award. Proposals may be withdrawn in person by a offeror or its authorized representative if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award. If this solicitation is an invitation for bids, bids may be withdrawn at any time prior to bid opening.

7. Contract Award

(a) The HA will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the HA, cost or price and other factors, specified elsewhere in this solicitation, considered.

(b) The HA may

- (1) reject any or all offers if such action is in the HA's interest,
- (2) accept other than the lowest offer,
- (3) waive informalities and minor irregularities in offers received, and (4) award more than one contract for all or part of the requirements stated.

(c) If this solicitation is a request for proposals, the HA may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

(d) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. If this solicitation is a request for proposals, before the offer's specified expiration time, the HA may accept an offer, whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the HA.

(e) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract.

8. Service of Protest

Any protest against the award of a contract pursuant to this solicitation shall be served on the HA by obtaining written and dated acknowledgment of receipt from the HA at the address shown on the cover of this solicitation. The determination of the HA with regard to such protest or to proceed to award notwithstanding such protest shall be final unless appealed by the protestor.

9. Offer Submission

Offers shall be submitted as follows and shall be enclosed in a sealed envelope and addressed to the office specified in the solicitation. The proposal shall show **the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror, on the face of the envelope.**

It is very important that the offer be properly identified on the face of the envelope as set forth above in order to insure that the date and time of receipt is stamped on the face of the offer envelope. Receiving procedures are: date and time stamp those envelopes identified as proposals and deliver them immediately to the appropriate contracting official, and only date stamp those envelopes which do not contain identification of the contents and deliver them to the appropriate procuring activity only through the routine mail delivery procedure.

[Describe bid or proposal preparation instructions here:]

General Conditions for Construction Contracts - Public Housing Programs

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing
OMB Approval No. 2577-0157 (exp. 01/31/2014)

Applicability. This form is applicable to any construction/development contract greater than \$100,000.

This form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 24 CFR 85.36, and those requirements set forth in Section 3 of the Housing and Urban Development Act of 1968 and its amendment by the Housing and Community Development Act of 1992, implemented by HUD at 24 CFR Part 135. The form is required for construction contracts awarded by Public Housing Agencies (PHAs).

The form is used by Housing Authorities in solicitations to provide necessary contract clauses. If the form were not used, HAs would be unable to enforce their contracts.

Public reporting burden for this collection of information is estimated to average 1.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Responses to the collection of information are required to obtain a benefit or to retain a benefit.

The information requested does not lend itself to confidentiality.

HUD may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB number.

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1. Definitions

- (a) "Architect" means the person or other entity engaged by the PHA to perform architectural, engineering, design, and other services related to the work as provided for in the contract. When a PHA uses an engineer to act in this capacity, the terms "architect" and "engineer" shall be synonymous. The Architect shall serve as a technical representative of the Contracting Officer. The Architect's authority is as set forth elsewhere in this contract.
- (b) "Contract" means the contract entered into between the PHA and the Contractor. It includes the forms of Bid, the Bid Bond, the Performance and Payment Bond or Bonds or other assurance of completion, the Certifications, Representations, and Other Statements of Bidders (form HUD-5370), these General Conditions of the Contract for Construction (form HUD-5370), the applicable wage rate determinations from the U.S. Department of Labor, any special conditions included elsewhere in the contract, the specifications, and drawings. It includes all formal changes to any of those documents by addendum, change order, or other modification.
- (c) "Contracting Officer" means the person delegated the authority by the PHA to enter into, administer, and/or terminate this contract and designated as such in writing to the Contractor. The term includes any successor Contracting Officer and any duly authorized representative of the Contracting Officer also designated in writing. The Contracting Officer shall be deemed the authorized agent of the PHA in all dealings with the Contractor.
- (d) "Contractor" means the person or other entity entering into the contract with the PHA to perform all of the work required under the contract.
- (e) "Drawings" means the drawings enumerated in the schedule of drawings contained in the Specifications and as described in the contract clause entitled Specifications and Drawings for Construction herein.
- (f) "HUD" means the United States of America acting through the Department of Housing and Urban Development including the Secretary, or any other person designated to act on its behalf. HUD has agreed, subject to the provisions of an Annual Contributions Contract (ACC), to provide financial assistance to the PHA, which includes assistance in financing the work to be performed under this contract. As defined elsewhere in these General Conditions or the contract documents, the determination of HUD may be required to authorize changes in the work or for release of funds to the PHA for payment to the Contractor. Notwithstanding HUD's role, nothing in this contract shall be construed to create any contractual relationship between the Contractor and HUD.
- (g) "Project" means the entire project, whether construction or rehabilitation, the work for which is provided for in whole or in part under this contract.
- (h) "PHA" means the Public Housing Agency organized under applicable state laws which is a party to this contract.
- (j) "Specifications" means the written description of the technical requirements for construction and includes the criteria and tests for determining whether the requirements are met.
- (l) "Work" means materials, workmanship, and manufacture and fabrication of components.
- (a) The Contractor shall furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the work. The Contractor shall also furnish all necessary water, heat, light, and power not made available to the Contractor by the PHA pursuant to the clause entitled Availability and Use of Utility Services herein.
- (b) The Contractor shall perform on the site, and with its own organization, work equivalent to at least [] (12 percent unless otherwise indicated) of the total amount of work to be performed under the order. This percentage may be reduced by a supplemental agreement to this order if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the PHA.
- (c) At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.
- (d) The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall hold and save the PHA, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.
- (e) The Contractor shall lay out the work from base lines and bench marks indicated on the drawings and be responsible for all lines, levels, and measurements of all work executed under the contract. The Contractor shall verify the figures before laying out the work and will be held responsible for any error resulting from its failure to do so.
- (f) The Contractor shall confine all operations (including storage of materials) on PHA premises to areas authorized or approved by the Contracting Officer.
- (g) The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. After completing the work and before final inspection, the Contractor shall (1) remove from the premises all scaffolding, equipment, tools, and materials (including rejected materials) that are not the property of the PHA and all rubbish caused by its work; (2) leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer; (3) perform all specified tests; and, (4) deliver the installation in complete and operating condition.
- (h) The Contractor's responsibility will terminate when all work has been completed, the final inspection made, and the work accepted by the Contracting Officer. The Contractor will then be released from further obligation except as required by the warranties specified elsewhere in the contract.

3. Architect's Duties, Responsibilities, and Authority

- (a) The Architect for this contract, and any successor, shall be designated in writing by the Contracting Officer.

- (b) The Architect shall serve as the Contracting Officer's technical representative with respect to architectural, engineering, and design matters related to the work performed under the contract. The Architect may provide direction on contract performance. Such direction shall be within the scope of the contract and may not be of a nature which: (1) institutes additional work outside the scope of the contract; (2) constitutes a change as defined in the Changes clause herein; (3) causes an increase or decrease in the cost of the contract; (4) alters the Construction Progress Schedule; or (5) changes any of the other express terms or conditions of the contract.
- (c) The Architect's duties and responsibilities may include but shall not be limited to:
- (1) Making periodic visits to the work site, and on the basis of his/her on-site inspections, issuing written reports to the PHA which shall include all observed deficiencies. The Architect shall file a copy of the report with the Contractor's designated representative at the site;
 - (2) Making modifications in drawings and technical specifications and assisting the Contracting Officer in the preparation of change orders and other contract modifications for issuance by the Contracting Officer;
 - (3) Reviewing and making recommendations with respect to - (i) the Contractor's construction progress schedules; (ii) the Contractor's shop and detailed drawings; (iii) the machinery, mechanical and other equipment and materials or other articles proposed for use by the Contractor; and, (iv) the Contractor's price breakdown and progress payment estimates; and,
 - (4) Assisting in inspections, signing Certificates of Completion, and making recommendations with respect to acceptance of work completed under the contract.

4. Other Contracts

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

Construction Requirements

5. Pre-construction Conference and Notice to Proceed

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

6. Construction Progress Schedule

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

7. Site Investigation and Conditions Affecting the Work

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

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

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

8. Differing Site Conditions

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

9. Specifications and Drawings for Construction

- (a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be required in the planning and production of the work. Such

promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

- (b) Wherever in the specifications or upon the drawings the words 'directed', 'required', 'ordered', 'designated', 'prescribed', or words of like import are used, it shall be understood that the 'direction', 'requirement', 'order', 'designation', or 'prescription', of the Contracting Officer is intended and similarly the words 'approved', 'acceptable', 'satisfactory', or words of like import shall mean 'approved by', or 'acceptable to', or 'satisfactory to' the Contracting Officer, unless otherwise expressly stated.
- (c) Where 'as shown', 'as indicated', 'as detailed', or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word 'provided' as used herein shall be understood to mean 'provide complete in place' that is 'furnished and installed'.
- (d) 'Shop drawings' means drawings, submitted to the PHA by the Contractor, subcontractor, or any lower tier subcontractor, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The PHA may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.
- (e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with other contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the PHA's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.
- (f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Architect approves any such variation and the Contracting Officer concurs, the Contracting Officer shall issue an appropriate modification to the contract, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.
- (g) It shall be the responsibility of the Contractor to make timely requests of the PHA for such large scale and full size drawings, color schemes, and other additional information, not already in his possession, which shall be requests may be submitted as the need arises, but each

such request shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay.

- (h) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the PHA and one set will be returned to the Contractor. As required by the Contracting Officer, the Contractor, upon completing the work under this contract, shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the work is completed and accepted.
- (i) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all shop drawings prepared by subcontractors are submitted to the Contracting Officer.

10. As-Built Drawings

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

11. Material and Workmanship

- (a) All equipment, material, and articles furnished under this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the contract to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of, and as approved by the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.
- (b) Approval of equipment and materials.
- (1) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment.
- waivers. Before installing the work, the Contractor shall

When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

- (2) When required by the specifications or the Contracting Officer, the Contractor shall submit appropriately marked samples (and certificates related to them) for approval at the Contractor's expense, with all shipping charges prepaid. The Contractor shall label, or otherwise properly mark on the container, the material or product represented, its place of origin, the name of the producer, the Contractor's name, and the identification of the construction project for which the material or product is intended to be used.
- (3) Certificates shall be submitted in triplicate, describing each sample submitted for approval and certifying that the material, equipment or accessory complies with contract requirements. The certificates shall include the name and brand of the product, name of manufacturer, and the location where produced.
- (4) Approval of a sample shall not constitute a waiver of the PHA right to demand full compliance with contract requirements. Materials, equipment and accessories may be rejected for cause even though samples have been approved.
- (5) Wherever materials are required to comply with recognized standards or specifications, such specifications shall be accepted as establishing the technical qualities and testing methods, but shall not govern the number of tests required to be made nor modify other contract requirements. The Contracting Officer may require laboratory test reports on items submitted for approval or may approve materials on the basis of data submitted in certificates with samples. Check tests will be made on materials delivered for use only as frequently as the Contracting Officer determines necessary to insure compliance of materials with the specifications. The Contractor will assume all costs of retesting materials which fail to meet contract requirements and/or testing materials offered in substitution for those found deficient.
- (6) After approval, samples will be kept in the Project office until completion of work. They may be built into the work after a substantial quantity of the materials they represent has been built in and accepted.
- (c) Requirements concerning lead-based paint. The Contractor shall comply with the requirements concerning lead-based paint contained in the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) as implemented by 24 CFR Part 35.

12. Permits and Codes

- (a) The Contractor shall give all notices and comply with all applicable laws, ordinances, codes, rules and regulations. Notwithstanding the requirement of the Contractor to comply with the drawings and specifications in the contract, all work installed shall comply with all applicable codes and regulations as amended by any

examine the drawings and the specifications for

compliance with applicable codes and regulations bearing on the work and shall immediately report any discrepancy it may discover to the Contracting Officer. Where the requirements of the drawings and specifications fail to comply with the applicable code or regulation, the Contracting Officer shall modify the contract by change order pursuant to the clause entitled Changes herein to conform to the code or regulation.

- (b) The Contractor shall secure and pay for all permits, fees, and licenses necessary for the proper execution and completion of the work. Where the PHA can arrange for the issuance of all or part of these permits, fees and licenses, without cost to the Contractor, the contract amount shall be reduced accordingly.

13. Health, Safety, and Accident Prevention

- (a) In performing this contract, the Contractor shall:
- (1) Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation;
 - (2) Protect the lives, health, and safety of other persons;
 - (3) Prevent damage to property, materials, supplies, and equipment; and,
 - (4) Avoid work interruptions.
- (b) For these purposes, the Contractor shall:
- (1) Comply with regulations and standards issued by the Secretary of Labor at 29 CFR Part 1926. Failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96), 40 U.S.C. 3701 et seq.; and
 - (2) Include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.
- (c) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 CFR Part 1904.
- (d) The Contracting Officer shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.
- (e) The Contractor shall be responsible for its subcontractors' compliance with the provisions of this clause. The Contractor shall take such action with respect to any subcontract as the PHA, the Secretary of Housing and Urban Development, or the Secretary of Labor shall direct as a means of enforcing such provisions.

- (f) New work which connects to existing work

14. Temporary Heating

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

15. Availability and Use of Utility Services

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

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

- (a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed under this contract, and which do not unreasonably interfere with the work required under this contract.
- (b) The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance of this contract, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.
- (c) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. Prior to disturbing the ground at the construction site, the Contractor shall ensure that all underground utility lines are clearly marked.
- (d) The Contractor shall shore up, brace, underpin, secure, and protect as necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected by the excavations or other operations connected with the construction of the project.
- (e) Any equipment temporarily removed as a result of work under this contract shall be protected, cleaned, and replaced in the same condition as at the time of award of this contract.

shall correspond in all respects with that to which it

connects and/or be similar to existing work unless otherwise required by the specifications.

- (g) No structural members shall be altered or in any way weakened without the written authorization of the Contracting Officer, unless such work is clearly specified in the plans or specifications.
- (h) If the removal of the existing work exposes discolored or unfinished surfaces, or work out of alignment, such surfaces shall be refinished, or the material replaced as necessary to make the continuous work uniform and harmonious. This, however, shall not be construed to require the refinishing or reconstruction of dissimilar finishes previously exposed, or finished surfaces in good condition, but in different planes or on different levels when brought together by the removal of intervening work, unless such refinishing or reconstruction is specified in the plans or specifications.
- (i) The Contractor shall give all required notices to any adjoining or adjacent property owner or other party before the commencement of any work.
- (j) The Contractor shall indemnify and save harmless the PHA from any damages on account of settlement or the loss of lateral support of adjoining property, any damages from changes in topography affecting drainage, and from all loss or expense and all damages for which the PHA may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.
- (k) The Contractor shall repair any damage to vegetation, structures, equipment, utilities, or improvements, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

17. Temporary Buildings and Transportation of Materials

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

18. Clean Air and Water

The contractor shall comply with the Clean Air Act, as

- (f) The PHA may conduct routine inspections of the construction site on a daily basis.

amended, 42 USC 7401 et seq., the Federal Water Pollution Control Water Act, as amended, 33 U.S.C. 1251 et seq., and standards issued pursuant thereto in the facilities in which this contract is to be performed.

19. Energy Efficiency

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

20. Inspection and Acceptance of Construction

- (a) Definitions. As used in this clause -
 - (1) "Acceptance" means the act of an authorized representative of the PHA by which the PHA approves and assumes ownership of the work performed under this contract. Acceptance may be partial or complete.
 - (2) "Inspection" means examining and testing the work performed under the contract (including, when appropriate, raw materials, equipment, components, and intermediate assemblies) to determine whether it conforms to contract requirements.
 - (3) "Testing" means that element of inspection that determines the properties or elements, including functional operation of materials, equipment, or their components, by the application of established scientific principles and procedures.
- (b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. All work is subject to PHA inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.
- (c) PHA inspections and tests are for the sole benefit of the PHA and do not: (1) relieve the Contractor of responsibility for providing adequate quality control measures; (2) relieve the Contractor of responsibility for loss or damage of the material before acceptance; (3) constitute or imply acceptance; or, (4) affect the continuing rights of the PHA after acceptance of the completed work under paragraph (j) below.
- (d) The presence or absence of the PHA inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specifications without the Contracting Officer's written authorization. All instructions and approvals with respect to the work shall be given to the Contractor by the Contracting Officer.
- (e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The PHA may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The PHA shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.
- (g) The Contractor shall, without charge, replace or correct work found by the PHA not to conform to

contract requirements, unless the PHA decides that it is in its interest to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

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

21. Use and Possession Prior to Completion

- (a) The PHA shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the PHA intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The PHA's possession or use shall not be deemed an acceptance of any work under the contract.
- (b) While the PHA has such possession or use, the Contractor shall be relieved of the responsibility for (1) the loss of or damage to the work resulting from the PHA's possession or use, notwithstanding the terms of the clause entitled Permits and Codes herein; (2) all maintenance costs on the areas occupied; and, (3) furnishing heat, light, power, and water used in the areas occupied without proper remuneration therefore. If prior possession or use by the PHA delays the progress of the
- (h) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the

work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

22. Warranty of Title

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

23. Warranty of Construction

- (a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any subcontractor or supplier at any tier. This warranty shall continue for a period of _____ (one year unless otherwise indicated) from the date of final acceptance of the work. If the PHA takes possession of any part of the work before final acceptance, this warranty shall continue for a period of (one year unless otherwise indicated) from the date that the PHA takes possession.
 - (b) The Contractor shall remedy, at the Contractor's expense, any failure to conform, or any defect. In addition, the Contractor shall remedy, at the Contractor's expense, any damage to PHA-owned or controlled real or personal property when the damage is the result of—
 - (1) The Contractor's failure to conform to contract requirements; or
 - (2) Any defects of equipment, material, workmanship or design furnished by the Contractor.
 - (c) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for (one year unless otherwise indicated) from the date of repair or replacement.
 - (d) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect or damage.
 - (e) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the PHA shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at the Contractor's expense.
 - (f) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall:
 - (1) Obtain all warranties that would be given in normal commercial practice;
 - (2) Require all warranties to be executed in writing, for the benefit of the PHA; and,
 - (3) Enforce all warranties for the benefit of the PHA.
 - (g) In the event the Contractor's warranty under paragraph (a) of this clause has expired, the PHA may bring suit at its own expense to enforce a subcontractor's, manufacturer's or supplier's warranty.
- Contractor shall not be liable for the repair of any defect of material or design furnished by the PHA nor for the

repair of any damage that results from any defect in PHA furnished material or design.

- (i) Notwithstanding any provisions herein to the contrary, the establishment of the time periods in paragraphs (a) and (c) above relate only to the specific obligation of the Contractor to correct the work, and have no relationship to the time within which its obligation to comply with the contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligation other than specifically to correct the work.
- (j) This warranty shall not limit the PHA's rights under the Inspection and Acceptance of Construction clause of this contract with respect to latent defects, gross mistakes or fraud.

24. Prohibition Against Liens

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

Administrative Requirements

25. Contract Period

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

26. Order of Provisions

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

27. Payments

- (a) The PHA shall pay the Contractor the price as provided in this contract.
- (b) The PHA shall make progress payments approximately every 30 days as the work proceeds, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. The PHA may, subject to written determination and approval of the Contracting Officer, make more frequent payments to contractors which are qualified small businesses.
- (c) Before the first progress payment under this contract, the Contractor shall furnish, in such detail as requested by the Contracting Officer, a breakdown of the total contract price showing the amount included therein for each principal category of the work, which shall substantiate the payment amount requested in order to provide a basis for determining progress payments. The breakdown shall be approved by the Contracting Officer and must be Material delivered to the Contractor at locations other than the site may also be taken into consideration if the Contractor furnishes satisfactory evidence that (1) it has

acceptable to HUD. If the contract covers more than one project, the Contractor shall furnish a separate breakdown for each. The values and quantities employed in making up this breakdown are for determining the amount of progress payments and shall not be construed as a basis for additions to or deductions from the contract price. The Contractor shall prorate its overhead and profit over the construction period of the contract.

- (d) The Contractor shall submit, on forms provided by the PHA, periodic estimates showing the value of the work performed during each period based upon the approved breakdown of the contract price. Such estimates shall be submitted not later than _____ days in advance of the date set for payment and are subject to correction and revision as required. The estimates must be approved by the Contracting Officer with the concurrence of the Architect prior to payment. If the contract covers more than one project, the Contractor shall furnish a separate progress payment estimate for each.
- (e) Along with each request for progress payments and the required estimates, the Contractor shall furnish the following certification, or payment shall not be made: I hereby certify, to the best of my knowledge and belief, that:
 - (1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;
 - (2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements; and,
 - (3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

Name: _____

Title: _____

Date: _____

- (f) Except as otherwise provided in State law, the PHA shall retain ten (10) percent of the amount of progress payments until completion and acceptance of all work under the contract; except, that if upon completion of 50 percent of the work, the Contracting Officer, after consulting with the Architect, determines that the Contractor's performance and progress are satisfactory, the PHA may make the remaining payments in full for the work subsequently completed. If the Contracting Officer subsequently determines that the Contractor's performance and progress are unsatisfactory, the PHA shall reinstate the ten (10) percent (or other percentage as provided in State law) retainage until such time as the Contracting Officer determines that performance and progress are satisfactory.
- (g) The Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration when computing progress payments.

acquired title to such material; (2) the material is properly stored in a bonded warehouse, storage yard, or similar suitable place as may be approved by the Contracting

Officer; (3) the material is insured to cover its full value; and (4) the material will be used to perform this contract. Before any progress payment which includes delivered material is made, the Contractor shall furnish such documentation as the Contracting Officer may require to assure the protection of the PHA's interest in such materials. The Contractor shall remain responsible for such stored material notwithstanding the transfer of title to the PHA.

- (h) All material and work covered by progress payments made shall, at the time of payment become the sole property of the PHA, but this shall not be construed as (1) relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or, (2) waiving the right of the PHA to require the fulfillment of all of the terms of the contract. In the event the work of the Contractor has been damaged by other contractors or persons other than employees of the PHA in the course of their employment, the Contractor shall restore such damaged work without cost to the PHA and to seek redress for its damage only from those who directly caused it.
- (i) The PHA shall make the final payment due the Contractor under this contract after (1) completion and final acceptance of all work; and (2) presentation of release of all claims against the PHA arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. Each such exception shall embrace no more than one claim, the basis and scope of which shall be clearly defined. The amounts for such excepted claims shall not be included in the request for final payment. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned.
- (j) Prior to making any payment, the Contracting Officer may require the Contractor to furnish receipts or other evidence of payment from all persons performing work and supplying material to the Contractor, if the Contracting Officer determines such evidence is necessary to substantiate claimed costs.
- (k) The PHA shall not; (1) determine or adjust any claims for payment or disputes arising there under between the Contractor and its subcontractors or material suppliers; or, (2) withhold any moneys for the protection of the subcontractors or material suppliers. The failure or refusal of the PHA to withhold moneys from the Contractor shall in nowise impair the obligations of any surety or sureties under any bonds furnished under this contract.

28. Contract Modifications

- (a) Only the Contracting Officer has authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing.
- (b) The Contracting Officer may modify the contract unilaterally (1) pursuant to a specific authorization stated in a contract clause (e.g., Changes); or (2) for administrative matters which do not change the rights or responsibilities of the parties (e.g., change in the PHA address). All other contract modifications shall be in the form of supplemental agreements signed by the
 - (1) Direct Costs. Materials (list individual items, the quantity and unit cost of each, and the aggregate cost); Transportation and delivery costs associated with materials; Labor breakdowns by hours or unit

Contractor and the Contracting Officer.

- (c) When a proposed modification requires the approval of HUD prior to its issuance (e.g., a change order that exceeds the PHA's approved threshold), such modification shall not be effective until the required approval is received by the PHA.

29. Changes

- (a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract including changes:
 - (1) In the specifications (including drawings and designs);
 - (2) In the method or manner of performance of the work;
 - (3) PHA-furnished facilities, equipment, materials, services, or site; or,
 - (4) Directing the acceleration in the performance of the work.
- (b) Any other written order or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances and source of the order and (2) that the Contractor regards the order as a change order.
- (c) Except as provided in this clause, no order, statement or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.
- (d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for a adjustment based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days (5 days for oral orders) before the Contractor gives written notice as required. In the case of defective specifications for which the PHA is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.
- (e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause, or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting a written statement describing the general nature and the amount of the proposal. If the facts justify it, the Contracting Officer may extend the period for submission. The proposal may be included in the notice required under paragraph (b) above. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.
- (f) The Contractor's written proposal for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following details:
 - costs (identified with specific work to be performed);
 - Construction equipment exclusively necessary for the change;
 - Costs of preparation and/ or revision to shop drawings resulting from the change;
 - Worker's

Compensation and Public Liability Insurance; Employment taxes under FICA and FUTA; and, Bond Costs when size of change warrants revision.

- (2) Indirect Costs. Indirect costs may include overhead, general and administrative expenses, and fringe benefits not normally treated as direct costs.
- (3) Profit. The amount of profit shall be negotiated and may vary according to the nature, extent, and complexity of the work required by the change.

The allowability of the direct and indirect costs shall be determined in accordance with the Contract Cost Principles and Procedures for Commercial Firms in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31), as implemented by HUD Handbook 2210.18, in effect on the date of this contract. The Contractor shall not be allowed a profit on the profit received by any subcontractor. Equitable adjustments for deleted work shall include a credit for profit and may include a credit for indirect costs. On proposals covering both increases and decreases in the amount of the contract, the application of indirect costs and profit shall be on the net-change in direct costs for the Contractor or subcontractor performing the work.

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

30. Suspension of Work

- (a) The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the PHA.
- (b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified (or within a reasonable time if not specified) in this contract an adjustment shall be made for any increase in the cost of performance of the contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have

been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or for which any equitable adjustment is provided for or excluded under any other provision of this contract.

- (c) A claim under this clause shall not be allowed (1) for any proceed with the work (or separable part of the work) that has been delayed. In this event, the PHA may take over the work and complete it, by contract or otherwise, and

costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and, (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

31. Disputes

- (a) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under the contract, unlike a claim relating to the contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by complying with the requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- (b) Except for disputes arising under the clauses entitled Labor Standards - Davis Bacon and Related Acts, herein, all disputes arising under or relating to this contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.
- (c) All claims by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the PHA against the Contractor shall be subject to a written decision by the Contracting Officer.
- (d) The Contracting Officer shall, within 60 (unless otherwise indicated) days after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made.
- (e) The Contracting Officer's decision shall be final unless the Contractor (1) appeals in writing to a higher level in the PHA in accordance with the PHA's policy and procedures, (2) refers the appeal to an independent mediator or arbitrator, or (3) files suit in a court of competent jurisdiction. Such appeal must be made within (30 unless otherwise indicated) days after receipt of the Contracting Officer's decision.
- (f) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

32. Default

- (a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with the diligence that will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within this time, the Contracting Officer may, by written notice to the Contractor, terminate the right to

may take possession of and use any materials, equipment, and plant on the work site necessary for completing the work. The Contractor and its sureties shall

be liable for any damage to the PHA resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the PHA in completing the work.

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

33. Liquidated Damages

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

completion of the work together with any increased costs occasioned the PHA in completing the work.

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

34. Termination for Convenience

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

35. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the PHA under the contract may be assigned to a bank, trust company, or other financial institution. Such assignments of claims shall only be made with the written concurrence of the Contracting Officer. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership as approved by the Contracting Officer.

36. Insurance

- (a) Before commencing work, the Contractor and each subcontractor shall furnish the PHA with certificates of insurance showing the following insurance is in force and will insure all operations under the Contract:
- (1) Workers' Compensation, in accordance with state or Territorial Workers' Compensation laws.
 - (2) Commercial General Liability with a combined single limit for bodily injury and property damage of not less than \$ _____ [Contracting Officer insert amount]

per occurrence to protect the Contractor and each subcontractor against claims for bodily injury or death and damage to the property of others. This shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under (3) below. If the Contractor has a "claims-made" policy, then the following additional requirements apply: the policy must provide a "retroactive date" which must be on or before the execution date of the Contract; and the extended reporting period may not be less than five years following the completion date of the Contract.

- (3) Automobile Liability on owned and non-owned motor vehicles used on the site(s) or in connection therewith for a combined single limit for bodily injury and property damage of not less than \$_____ [Contracting Officer insert amount] per occurrence.
- (b) Before commencing work, the Contractor shall furnish the PHA with a certificate of insurance evidencing that Builder's Risk (fire and extended coverage) Insurance on all work in place and/or materials stored at the building site(s), including foundations and building equipment, is in force. The Builder's Risk Insurance shall be for the benefit of the Contractor and the PHA as their interests may appear and each shall be named in the policy or policies as an insured. The Contractor in installing equipment supplied by the PHA shall carry insurance on such equipment from the time the Contractor takes possession thereof until the Contract work is accepted by the PHA. The Builder's Risk Insurance need not be carried on excavations, piers, footings, or foundations until such time as work on the superstructure is started. It need not be carried on landscape work. Policies shall furnish coverage at all times for the full cash value of all completed construction, as well as materials in place and/or stored at the site(s), whether or not partial payment has been made by the PHA. The Contractor may terminate this insurance on buildings as of the date taken over for occupancy by the PHA. The Contractor is not required to carry Builder's Risk Insurance for modernization work which does not involve structural alterations or additions and where the PHA's existing fire and extended coverage policy can be endorsed to include such work.
- (c) All insurance shall be carried with companies which are financially responsible and admitted to do business in the State in which the project is located. If any such insurance is due to expire during the construction period, the Contractor (including subcontractors, as applicable) shall not permit the coverage to lapse and shall furnish evidence of coverage to the Contracting Officer. All certificates of insurance, as evidence of coverage, shall provide that no coverage may be canceled or non-renewed by the insurance company until at least 30 days prior written notice has been given to the Contracting Officer.

37. Subcontracts

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

- (2) "Subcontractor" means any supplier, vendor, or firm that furnishes supplies, materials, equipment, or services to or for the Contractor or another subcontractor.
- (b) The Contractor shall not enter into any subcontract with any subcontractor who has been temporarily denied participation in a HUD program or who has been suspended or debarred from participating in contracting programs by any agency of the United States Government or of the state in which the work under this contract is to be performed.
- (c) The Contractor shall be as fully responsible for the acts or omissions of its subcontractors, and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Contractor.
- (d) The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this contract insofar as they are applicable to the work of subcontractors.
- (e) Nothing contained in this contract shall create any contractual relationship between any subcontractor and the PHA or between the subcontractor and HUD.

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

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

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

39. Equal Employment Opportunity

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

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or handicap.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, or handicap. Such action shall include, but not be limited to, (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship.

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- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
 - (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or handicap.
 - (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
 - (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
 - (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or Federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
 - (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.
 - (j) Compliance with the requirements of this clause shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act and the Indian Preference clause of this contract.
- 40. Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.**
- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
 - (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
 - (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the 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.
 - (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
 - (g) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

41. Interest of Members of Congress

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

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

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

43. Limitations on Payments made to Influence Certain Federal Financial Transactions

- (a) The Contractor agrees to comply with Section 1352 of Title 31, United States Code which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) The Contractor further agrees to comply with the requirement of the Act to furnish a disclosure (OMB Standard Form LLL, Disclosure of Lobbying Activities) if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

44. Royalties and Patents

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

45. Examination and Retention of Contractor's Records

be posted at all times by the Contractor and its

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

46. Labor Standards - Davis-Bacon and Related Acts

If the total amount of this contract exceeds \$2,000, the Federal labor standards set forth in the clause below shall apply to the development or construction work to be performed under the contract.

- (a) Minimum Wages.
 - (1) All laborers and mechanics employed under this contract in the development or construction of the project(s) involved 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 issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the regular 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 in the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall subcontractors at the site of the work in a prominent and

accessible place where it can be easily seen by the workers.

(2) (i) Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met: (A) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (B) The classification is utilized in the area by the construction industry; and (C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employee Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized

representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

(iii) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

(iv) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (a)(2)(ii) or (iii) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in classification.

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

(4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as 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. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

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

(c) Payrolls and basic records.

(1) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working in the construction or development of the project. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (2) (i) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1214-0149.)
- (ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (A) That the payroll for the payroll period contains the information required to be maintained under paragraph (c) (1) of this clause and that such information is correct and complete;
- (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and
- (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by subparagraph (c)(2)(ii) of this clause.
- (iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (3) The Contractor or subcontractor shall make the records required under subparagraph (c)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to

make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

- (d) (1) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (2) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under

- the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (3) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- (e) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.
- (f) Contract termination; debarment. A breach of this contract clause may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.
- (g) Compliance with Davis-Bacon and related Act requirements. All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (h) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this clause shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the PHA, HUD, the U.S. Department of Labor, or the employees or their representatives.
- (i) Certification of eligibility.
- (1) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a United States Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (3) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.
- (j) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.
- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in subparagraph (j)(1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic (including watchmen and guards) employed in violation of the provisions set forth in subparagraph (j)(1) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in subparagraph (j)(1) of this clause.
- (3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in subparagraph (j)(2) of this clause.
- (k) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause, and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.

47. Non-Federal Prevailing Wage Rates

- (a) Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under State or tribal law to be prevailing, with respect to any employee in any trade or position employed under the contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate exceeds: (1) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141 et seq.) to be prevailing in the locality with respect to such trade;
- (b) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor (DOL) or a DOL-recognized State Apprenticeship Agency; or
- (c) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

48. Procurement of Recovered Materials.

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

General Conditions for Non-Construction Contracts

Section II – (With Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 1/01/2014)

Public Reporting Burden for this collection of information is estimated to average 0.08 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Applicability. This form HUD-5370C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

in the classification under this Contract from the first day on which work is performed in the classification.

- 1) Non-construction contracts (*without* maintenance) greater than \$100,000 - use Section I;
- 2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 968.105) greater than \$2,000 but not more than \$100,000 - use Section II; and
- 3) Maintenance contracts (including nonroutine maintenance), greater than \$100,000 – use Sections I and II.

Section II – Labor Standard Provisions for all Maintenance Contracts greater than \$2,000

1. Minimum Wages

- (a) All maintenance laborers and mechanics employed under this Contract in the operation of the project(s) shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development which is attached hereto and made a part hereof. Such laborers and mechanics shall be paid the appropriate wage rate 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. The wage determination, including any additional classifications and wage rates approved by HUD under subparagraph 1(b), 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.
- (b) (i) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate only when the following criteria have been met:
 - (1) The work to be performed by the classification required is not performed by a classification in the wage determination;
 - (2) The classification is utilized in the area by the industry; and
 - (3) The proposed wage rate bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) The wage rate determined pursuant to this paragraph shall be paid to all workers performing work

2. Withholding of funds

The Contracting Officer, upon his/her own action or upon request of HUD, shall withhold or cause to be withheld from the Contractor under this Contract or any other contract subject to HUD-determined wage rates, with the same prime Contractor, so 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 this clause. In the event of failure to pay any laborer or mechanic employed under this Contract all or part of the wages required under this Contract, the Contracting Officer or HUD may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment or advance until such violations have ceased. The Public Housing Agency or HUD may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

3. Records

- (a) The Contractor and each subcontractor shall make and maintain for three (3) years from the completion of the work records containing the following for each laborer and mechanic:
 - (i) Name, address and Social Security Number;
 - (ii) Correct work classification or classifications;
 - (iii) Hourly rate or rates of monetary wages paid;
 - (iv) Rate or rates of any fringe benefits provided;
 - (v) Number of daily and weekly hours worked;
 - (vi) Gross wages earned;
 - (vii) Any deductions made; and
 - (viii) Actual wages paid.
- (b) The Contractor and each subcontractor shall make the records required under paragraph 3(a) available for inspection, copying, or transcription by authorized representatives of HUD or the HA and shall permit such representatives to interview employees during working hours on the job. If the Contractor or any subcontractor fails to make the required records available, HUD or its designee 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.

4. Apprentices and Trainees

- (a) Apprentices and trainees 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:
 - (i) A bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration (ETA), Office of

- Apprenticeship Training, Employer and Labor Services (OATELS), or with a state apprenticeship agency recognized by OATELS, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice;
- (ii) A trainee program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, ETA; or
 - (iii) A training/trainee program that has received prior approval by HUD.
- (b) Each apprentice or trainee must be paid at not less than the rate specified in the registered or approved program for the apprentice's/trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices and trainees shall be paid fringe benefits in accordance with the provisions of the registered or approved program. If the program does not specify fringe benefits, apprentices/trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.
 - (c) The allowable ratio of apprentices or trainees to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the employer as to the entire work force under the approved program.
 - (d) Any worker employed at an apprentice or trainee wage rate who is not registered in an approved program, and any apprentice or trainee performing work on the job site in excess of the ratio permitted under the approved program, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.
 - (e) In the event OATELS, a state apprenticeship agency recognized by OATELS or ETA, or HUD, withdraws approval of an apprenticeship or trainee program, the employer will no longer be permitted to utilize apprentices/trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

5. Disputes concerning labor standards

- (a) Disputes arising out of the labor standards provisions contained in Section II of this form HUD-5370-C, other than those in Paragraph 6, shall be subject to the following procedures. Disputes within the meaning of this paragraph include disputes between the Contractor (or any of its subcontractors) and the HA, or HUD, or the employees or their representatives, concerning payment of prevailing wage rates or proper classification. The procedures in this section may be initiated upon HUD's own motion, upon referral of the HA, or upon request of the Contractor or subcontractor(s).
 - (i) A Contractor and/or subcontractor or other interested party desiring reconsideration of findings of violation by the HA or HUD relating to the payment of straight-time prevailing wages or classification of work shall request such reconsideration by letter postmarked within 30 calendar days of the date of notice of findings issued by the HA or HUD. The request shall set

forth those findings that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The request shall be directed to the appropriate HA or HUD official in accordance with instructions contained in the notice of findings or, if the notice does not specify to whom a request should be made, to the Regional Labor Relations Officer (HUD).

- (ii) The HA or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations.
- (iii) The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.
- (b) Disputes arising out of the labor standards provisions of paragraph 6 shall not be subject to paragraph 5(a) of this form HUD-5370C. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this paragraph 5(b) include disputes between the Contractor (or any of its subcontractors) and the HA, HUD, the U.S. Department of Labor, or the employees or their representatives.

6. Contract Work Hours and Safety Standards Act

The provisions of this paragraph 6 are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" includes watchmen and guards.

- (a) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in paragraph 6(a), the Contractor and any

subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to the District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

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

7. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this Section II and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the provisions contained in these clauses.

8. Non-Federal Prevailing Wage Rates

Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under state law to be prevailing, with respect to any employee in any trade or position employed under the Contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

General Contract Conditions for Small Construction/Development Contracts

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

OMB Approval No. 2577-0157 (exp. 01/31/2014)

Applicability. The following contract clauses are applicable and must be inserted into **small construction/development contracts greater than \$2,000 but not more than \$100,000.**

1. Definitions

Terms used in this form are the same as defined in form HUD-5370

2. Prohibition Against Liens

The Contractor is prohibited from placing a lien on the PHA's property. This prohibition shall apply to all subcontractors at any tier and all materials suppliers. The only liens on the PHA's property shall be the Declaration of Trust or other liens approved by HUD.

3. Disputes

- (a) Except for disputes arising under the **Labor Standards** clauses, all disputes arising under or relating to this contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.
- (b) All claims by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the PHA against the Contractor shall be subject to a written decision by the Contracting Officer.
- (c) The Contracting Officer shall, within 30 days after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made.
- (d) The Contracting Officer's decision shall be final unless the Contractor (1) appeals in writing to a higher level in the PHA in accordance with the PHA's policy and procedures, (2) refers the appeal to an independent mediator or arbitrator, or (3) files suit in a court of competent jurisdiction. Such appeal must be made within 30 days after receipt of the Contracting Officer's decision.
- (e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

4. Default

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

- (b) The Contractor's right to proceed shall not be terminated or the

Contractor charged with damages under this clause if –

- (1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor; and
 - (2) The Contractor, within 10 days from the beginning of such delay notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of Fact warrant such action, time for completing the work shall be extended by written modification to the contract. The findings of the Contracting Officer shall be reduced to a written decision which shall be subject to the provisions of the **Disputes** clause of this contract.
- (c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligation of the parties will be the same as if the termination had been for convenience of the PHA.

5. Termination for Convenience

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

6. Insurance

- (a) Before commencing work, the Contractor and each subcontractor shall furnish the PHA with certificates of insurance showing the following insurance is in force and will insure all operations under the Contract:

(1) Workers' Compensation, in accordance with state or Territorial Workers' Compensation laws.

(2) Commercial General Liability with a combined single limit for bodily injury and property damage of not less than \$ _____ [Contracting Officer insert amount] per occurrence to protect the Contractor and each subcontractor against claims for bodily injury or death and damage to the property of others. This shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under (3) below. If the Contractor has a "claims-made" policy, then the following additional requirements apply: the policy must provide a "retroactive date" which must be on or before the execution date of the Contract; and the extended reporting period may not be less than five years following the completion date of the Contract.

(3) Automobile Liability on owned and non-owned motor vehicles used on the site(s) or in connection therewith for a combined single limit for bodily injury and property damage of not less than \$ _____ [Contracting Officer insert amount] per occurrence.

(b) Before commencing work, the Contractor shall furnish the PHA with a certificate of insurance evidencing that Builder's Risk (fire and extended coverage) Insurance on all work in place and/or materials stored at the building site(s), including foundations and building equipment, is in force. The Builder's Risk Insurance shall be for the benefit of the Contractor and the PHA as their interests may appear and each shall be named in the policy or policies as an insured. The Contractor in installing equipment supplied by the PHA shall carry insurance on such equipment from the time the Contractor takes possession thereof until the Contract work is accepted by the PHA. The Builder's Risk Insurance need not be carried on excavations, piers, footings, or foundations until such time as work on the superstructure is started. It need not be carried on landscape work. Policies shall furnish coverage at all times for the full cash value of all completed construction, as well as materials in place and/or stored at the site(s), whether or not partial payment has been made by the PHA. The Contractor may terminate this insurance on buildings as of the date taken over for occupancy by the PHA. The Contractor is not required to carry Builder's Risk Insurance for modernization work which does not involve structural alterations or additions and where the PHA's existing fire and extended coverage policy can be endorsed to include such work.

(c) All insurance shall be carried with companies which are financially responsible and admitted to do business in the State in which the project is located. If any such insurance is due to expire during the construction period, the Contractor (including subcontractors, as applicable) shall not permit the coverage to lapse and shall furnish evidence of coverage to the Contracting Officer. All certificates of insurance, as evidence of coverage, shall provide that no coverage may be canceled or non-renewed by the insurance company until at least 30 days prior written notice has been given to the Contracting Officer.

7. Contract Modifications

(a) Only the Contracting Officer has authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing.

(b) The Contracting Officer may modify the contract unilaterally (1) pursuant to a specific authorization stated in a contract clause (e.g., Changes); or (2) for administrative matters which do not change the rights or responsibilities of the parties (e.g.,

change in the PHA address). All other contract modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer.

(c) When a proposed modification requires the approval of HUD prior to its issuance (e.g., a change order that exceeds the PHA's approved threshold), such modification shall not be effective until the required approval is received by the PHA.

8. Changes

(a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract including changes:

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) PHA-furnished facilities, equipment, materials, services, or site; or,
- (4) Directing the acceleration in the performance of the work.

(b) Any other written order or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances and source of the order and (2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for a adjustment based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days (5 days for oral orders) before the Contractor gives written notice as required. In the case of defective specifications for which the PHA is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause, or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting a written statement describing the general nature and the amount of the proposal. If the facts justify it, the Contracting Officer may extend the period for submission. The proposal may be included in the notice required under paragraph (b) above. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(f) The Contractor's written proposal for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following details:

- (1) Direct Costs. Materials (list individual items, the quantity and unit cost of each, and the aggregate cost); Transportation and delivery costs associated with materials; Labor

breakdowns by hours or unit costs (identified with specific work to be performed); Construction equipment exclusively necessary for the change; Costs of preparation and/ or revision to shop drawings resulting from the change; Worker's Compensation and Public Liability Insurance; Employment taxes under FICA and FUTA; and, Bond Costs - when size of change warrants revision.

- (2) Indirect Costs. Indirect costs may include overhead, general and administrative expenses, and fringe benefits not normally treated as direct costs.
- (3) Profit. The amount of profit shall be negotiated and may vary according to the nature, extent, and complexity of the work required by the change.

The allowability of the direct and indirect costs shall be determined in accordance with the Contract Cost Principles and Procedures for Commercial Firms in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31), as implemented by HUD Handbook 2210.18, in effect on the date of this contract. The Contractor shall not be allowed a profit on the profit received by any subcontractor. Equitable adjustments for deleted work shall include a credit for profit and may include a credit for indirect costs. On proposals covering both increases and decreases in the amount of the contract, the application of indirect costs and profit shall be on the net-change in direct costs for the Contractor or subcontractor performing the work.

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

9.Examination and Retention of Contractor's Records

The HA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until three years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

10.Rights in Data and Patent Rights (Ownership and Proprietary Interest)

The HA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials, and documents discovered or produced by Contractor pursuant to the terms of this Contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of this Contract.

11.Energy Efficiency

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

12. Procurement of Recovered Materials

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

13. Training and Employment Opportunities for Residents in the Project Area (Section 3, HUD Act of 1968; 24 CFR 135)

- (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 the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

14. Labor Standards - Davis-Bacon and Related Acts

(a) Minimum Wages.

(1) All laborers and mechanics employed under this contract in the construction or development of the project(s) involved 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 issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the regular 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 in the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in

a prominent and accessible place where it can be easily seen by the workers.

- (2) (i) Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:
- (a) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (b) The classification is utilized in the area by the construction industry; and
 - (c) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employee Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.
- (iii) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.
- (iv) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (a)(2)(ii) or (iii) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as 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. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

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

(c) **Payrolls and Basic Records.**

- (1) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working in the construction or development of the project. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification

of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (2) (i) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1214-0149.)
- (ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (A) That the payroll for the payroll period contains the information required to be maintained under paragraph (c)(1) of this clause and that such information is correct and complete;
- (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and
- (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by subparagraph (c)(2)(ii) of this clause.
- (iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (3) The Contractor or subcontractor shall make the records required under subparagraph (c)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

- (d) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (e) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate

specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

- (g) **Compliance with Copeland Act Requirements.** The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

- (h) **Contract Termination; Debarment.** A breach of the labor standards clauses in this contract may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

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

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

- (k) **Certification of Eligibility.**

- (1) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a United States Government

contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

- (3) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.

(l) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause, and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.

(m) Non-Federal Prevailing Wage Rates. Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under State law to be prevailing, with respect to any employee in any trade or position employed under the contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate exceeds:

- (i) the applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141 et seq.) to be prevailing in the locality with respect to such trade;
- (ii) an applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor (DOL) or a DOL-recognized State Apprenticeship Agency; or
- (iii) an applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

Construction Progress Schedule

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0157 (Exp. 11/30/2023)

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Construction practices and HUD administrative requirements establish the need that HAs maintain certain records or submit certain documents in conjunction with the oversight of the award of construction contracts for the construction of new low-income housing developments or modernization of existing developments. These forms are used by HAs to provide information on the construction progress schedule and schedule of amounts for contract payments. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

1. Name of Public Housing Agency/Indian Housing Authority (PHA/IHA)

2. City	3. State	5. Project Name
4. Location		6. Project Number
7. Contract For		8. Contract Time (Days)
9. From (mm/dd/yyyy) To (mm/dd/yyyy)		10. Contract Price \$
11. Number of Buildings	12. Number of Dwelling Units	13. Number of Rooms

(Submit as many pages as necessary to cover the construction period.)	Year (yyy)						
	Month						
	Actual Monthly Value, Work in Place (\$)						
	Actual Accumulated Progress (%)						
	Anticipated Monthly Value (\$)						
	Accumulated Scheduled Progress (%)						

Submitted by	Contractor's Name		
	Title	Signature	Date (mm/dd/yyyy)
Approved by	PHA/IHA		
	Title		Date (mm/dd/yyyy)
Approved by	Architect		Date (mm/dd/yyyy)

Instructions for Preparation of Construction Progress Schedule
Form HUD-5372

General. The information required for items 1 through 6 can be obtained from the contract documents. (7.) Enter the type of work awarded by the PHA/IHA. This may be "general construction," "plumbing," "heating," "electrical," etc., depending upon prime contract awards. (8.) Enter the contract time in calendar days (unless otherwise stated). (9.) Enter the starting and completion dates as established by the Notice to Proceed.

Year and Month. At the top of the Schedule, space is provided for inserting the "Year" and "Month" to identify the times during which the work is to be performed.

Year. Enter the year when the Notice to Proceed was issued. If the starting date of the contract is such that the time assigned for completion will be carried into a succeeding year, two yearly designations will be shown, each centered over the applicable spread of time for each year.

Month. The body of the Schedule is divided into Columns, each representing a period of one month. Starting in the Column with the month stated in the Notice to Proceed, enter at the top of each column the successive months corresponding to the entire spread of the total contract time. The Schedule must contain monthly columns to cover the entire active period of contract, with extra columns for possible overruns in contract time.

Computation of Anticipated Monthly Value of Work in Place

Before presenting the form for approval, enter in each monthly column the dollar value (omit cents) of the increment of work anticipated to be put in place during that interval of time. This shall be the Contractor's best estimate of the rate of progress for each month. This section contains a suggested guide for the elapsed contract time vs. progress percentages.

The horizontal total of the monthly dollars shown for "Anticipated Monthly Value" must equal the contract price shown in the heading.

Accumulated Scheduled Progress – %

Entries on this line shall show in percentage of total completion the cumulative stage of progress that is scheduled to be reached at the end of each monthly interval. It is generally sufficient to state this anticipated progress to the nearest tenth of one percent, but for very large contracts it may be advisable to extend computations to the nearest hundredth.

The entry for the first month's column should be the % obtained by the anticipated monthly dollar value of work in place at the close of the first month being divided by the contract price.

The entry for the second month's column is obtained by the sum of the anticipated monthly dollar values of work in place for Columns 1 and 2 being divided by the contract price.

Enter in the third month's column the percentage computed similarly, using the sum of dollar values of work in place for Columns 1, 2, and 3. Continue in this manner for the succeeding monthly columns until "100" is reached in the final column.

Charting Actual Progress. The horizontal space extending through the monthly columns is divided into "Actual Monthly Value of Work in Place – \$" and Actual Accumulated Progress – %." In each monthly column show the actual accumulated % of progress and the actual value of work in place for that month, as the work progresses. An anticipated complete shutdown at some stage in the work because of adverse seasonal weather or otherwise, as may occur in road work, excavation (grading), etc., is readily shown by a gap.

The Contractor's name shall be placed in the lower left-hand corner of the form, together with the signature and title of the employee who prepared the Schedule and the date. The form then shall be sent to the Architect for review. If the Architect considers that changes are necessary to make the Schedule more realistic, it will withhold approval and so advise the Contractor. When the form is acceptable and approved by the Architect, and the PHA/ IHA, it will be returned to the Contractor, who shall reproduce and submit the number and style of prints required by the PHA/ IHA.

Normal building construction experience has proved that the rate of overall progress (as measured by work in place) accelerates slowly at the start, reaches its peak in the middle third of the construction period, and tapers down at the close. The data following illustrate the general average expectancy of a well-balanced operation and may be used as a guide. If the proposed progress lies within reasonable range of these check points, the Schedule may be considered satisfactory insofar as the time-performance feature is involved.

% of Contract Time	% of Accumulated Progress
0	0
10	2
20	8
30	20
40	37
50	57
60	75
70	89
80	96
90	99
100	100

The foregoing percentages must be tempered by consideration of seasonal weather conditions and other known conditions which may affect the progress of the work. These percentages are offered for information only.

Schedule of Amounts for
Contract Payments

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0157
(Exp. 11/30/2023)

No progress payments shall be made to the contractor unless a schedule of amounts
for contract payments in accordance with the construction contract is received.

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching
existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or
sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number. Construction
practices and HUD administrative requirements establish the need that HAs maintain certain records or submit certain documents in conjunction with the
oversight of the award of construction contracts for the construction of new low-income housing developments or modernization of existing developments.
These forms are used by HAs to provide information on the construction progress schedule and schedule of amounts for contract payments. Responses to
the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

Project Name and Location
Project Number

Name, Address, and Zip Code of Contractor

Nature of Contract
Contract Number

Approved for Contractor by
Title
Date (mm/dd/yyyy)

Approved for Architect by
Title
Date (mm/dd/yyyy)

Approved for Owner by
Title
Date (mm/dd/yyyy)

Item No. (1)	Description of Item (2)	Quantity (3)	Unit of Measure (4)	Unit Price in Place (5)	Amount of Sub-Item (6)	Amount of Principal Item (7)

Total Amount of Contract or Carried Forward
\$

To the best of my knowledge, all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.
Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Signature of authorized representative
Date signed (mm/dd/yyyy)

Instructions for Preparation of form HUD-51000

1. A separate breakdown is required for each project and prime contract instructions for preparation are given below.

a. **Heading.** Enter all identifying information required for both forms.

b. **Columns 1 and 2.** In column 1, enter the item numbers starting with No. 1, and in column 2 enter each principal division of work incorporated in the contract work.

(1) **Master List.** The Master list contains the basic items into which any construction contract may be subdivided for the purpose of preparing the Construction Progress Schedule and the Periodical Estimates for Partial Payments. Only those items shall be selected which apply to the particular contract. To ensure uniformity, no change shall be made in the item numbers. Generally, about 25 to 40 major items appear in a contract.

(2) **Items Subdivided.** In the Contractor's breakdown, against which all periodical estimates will be checked prior to payment, each major item must be subdivided into sub-items pertinent to the project involved and in agreement with the Contractor's intended basis for requesting monthly payments.

c. **Column 3.** Enter the total quantity for each sub-item of each principal division of work listed in the breakdown.

d. **Column 4.** Enter the appropriate unit of measure for each sub-item of work opposite the quantities described in column 3, such as "sq. ft.," "cu. yd.," "tons," "lb.," "lumber per M/BM," "brickwork per M," etc., applicable to the particular sub-item. Items shown on "lump sum" or equivalent basis will be paid for only on completion of the whole item and not on a percentage of completion basis.

e. **Column 5.** Enter the unit price, in place, of each sub-item of work.

f. **Column 6.** Enter the amount of each sub-item obtained by multiplying the quantities in column 3 by the corresponding unit prices in column 5.

g. **Column 7.** Enter the amount of principal item only, obtained by adding the amounts of all sub-items of each principal division of work listed in column 6. Continue with the breakdown on form HUD-51000.

h. The "Schedule of Amounts for Contract Payments" shall be signed and dated in the space provided at the bottom of each sheet of the form by the individual who prepared the breakdown for the Contractor.

2. The minimum number of copies required for each submission for approval is an original and two copies. When approved, one fully approved copy will be returned to the Contractor.

Master List of Items

Item No.	Division of Work	Item No.	Division of Work	Item No.	Division of Work
1	Bond	20	Rough Carpentry		
2	General Conditions	21	Metal Bucks	44	Retaining Walls
3	Demolition & Clearing	22	Caulking	45	Storm Sewers
	Structures	23	Weatherstripping	46	Sanitary Sewers
4	General Excavation	24	Lath & Plastering-Drywall	47	Water Distribution System
5	Footing Excavation	25	Stucco	48	Gas Distribution System
6	Backfill	26	Finish Carpentry	49	Electrical Distribution System
7	Foundation Piles & Caissons	27	Finish Hardware	50	Street & Yard Lighting
8	Concrete Foundations	28	Glass & Glazing	51	Fire & Police Alarm System
9	Concrete Superstructures	29	Metal Doors	52	Fire Protection System
10	Reinforcing Steel	30	Metal Base & Trim	53	Street Work
11	Waterproofing & Dampproofing	31	Toilet Partitions	54	Yard Work
12	Spandrel Waterproofing	32	Floors	55	(Other)
13	Structural Steel	33	Painting & Decorating	56	(Other)
14	Masonry	34	Screens		
15	Stonework	35	Plumbing		Equipment
16	Miscellaneous & Ornamental Metal	36	Heating	57	Shades & Drapery Rods
17	Metal Windows	37	Ventilating System	58	Ranges
18	Roofing	38	Electrical	59	Refrigerators
19	Sheet Metal	39	Elevators	60	Kitchen Cabinets & Work Tables
		40	Elevator Enclosures—Metal	61	Laundry Equipment
		41	Incinerators—Masonry & Parts	62	(Other)
		42	(Other)		
		43	(Other)	63	Punch List ½
				64	Lawns & Planting

1 General Conditions should be 3% to 5% of contract amount.

2 Punch List should be approximately 1/2 of 1% or \$30 per dwelling unit, whichever is greater.

Instructions

Headings. Enter all identifying data required. Periodic estimates must be numbered in sequence beginning with the number 1.

Columns 1 and 2. The "Item Number" and "Description of Item" must correspond to the number and descriptive title assigned to each principal division of work in the "Schedule of Amounts for Contract Payments", form HUD-51000.

Column 3. Enter the accumulated value of each principal division of work completed as of the closing date of the periodic estimate. Enter the total in the space provided.

Certifications. The certification of the contractor includes the analysis of amounts used to determine the net balance due. In the first paragraph, enter the name of the Public Housing Agency, the contractor, and the date of the contract. Enter the calculations used in arriving at the "Balance Due This Payment" on lines 1 through 16.

Enter the contractor's name and signature in the certification following line 16.

The latter portion of this certification relating to payment of legal rates of wages, is required by the contract before any payment may be made. However, if the contractor does not choose to certify on behalf of his/her subcontractors to wage payments made by them, he/she may modify the language to cover only himself /herself and attach a list of all subcontractors who employed labor on the site during the period covered by the Periodic Estimate, together with the individual certifications of each.

Certification of the Contractor or Duly Authorized Representative

According to the best of my knowledge and belief, I certify that all items and amounts shown on the other side of this form are correct; that all work has been performed and material supplied in full accordance with the items and conditions of the contract between the (name of owner)

_____ and (contractor) _____
dated (mm/dd/yyyy) _____, and duly authorized deviations, substitutions, alterations, and additions; that the following is a true and correct statement of the Contract Account up to and including the last day of the period covered by this estimate, and that no part of the "Balance Due This Payment" has been received.

1. Original Contract Amount \$ _____

Approved Change Orders:

2. Additions (Total from Col. 3, form HUD-51002) \$ _____
3. Deductions (Total from Col. 5, form HUD-51002) \$ _____ (net) \$ _____
4. Current Adjusted Contract Amount (line 1 plus or minus net) \$ _____

Computation of Balance Due this Payment

5. Value of Original Contract work completed to date (from other side of this form) \$ _____

Completed Under Approved Change Orders

6. Additions (from Col. 4, form HUD-51002) \$ _____
7. Deductions (from Col. 5, form HUD-51002) \$ _____ (net) \$ _____
8. Total Value of Work in Place (line 5 plus or minus net line 7) \$ _____
9. **Less:** Retainage, _____ % \$ _____
10. Net amount earned to date (line 8 less line 9) \$ _____
11. **Less:** Previously earned (line 10, last Periodic Estimate) \$ _____
12. Net amount due, work in place (line 10 less line 11) \$ _____

Value of Materials Properly Stored

13. At close of this period (from form HUD-51004) \$ _____
14. **Less:** Allowed last period \$ _____
15. Increase (decrease) from amount allowed last period \$ _____
16. **Balance Due This Payment** \$ _____

I further certify that all just and lawful bills against the undersigned and his/her subcontractors for labor, material, and equipment employed in the performance of this contract have been paid in full in accordance with the terms and conditions of this contract, and that the undersigned and his/her subcontractors have complied with, or that there is an honest dispute with respect to, the labor provisions of this contract.

Name of Contractor	Signature of Authorized Representative	Title	Date (mm/dd/yyyy)
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Certificate of Authorized Project Representative and of Contracting Officer

Each of us certifies that he/she has checked and verified this Periodic Estimate No. _____; that to the best of his/her knowledge and belief it is a true statement of the value of work performed and material supplied by the contractor; that all work and material included in this estimate has been inspected by him/her or by his/her authorized assistants; and that such work has been performed or supplied in full accordance with the drawings and specifications, all applicable accessibility requirements (including Section 504 and Title II of the Americans with Disabilities Act; and the Fair Housing Act and Title III of the Americans with Disabilities Act, if applicable), the terms and conditions of the contract, and duly authorized deviations, substitutions, alterations, and additions, all of which have been duly approved.

We, therefore, approve as the "Balance Due this Payment" the amount of \$ _____

Authorized Project Representative	Date (mm/dd/yyyy)	Contracting Officer	Date (mm/dd/yyyy)
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I certify the information on this form and in any accompanying documentation is true and accurate. I acknowledge making, presenting, or submitting a false, fictitious, or fraudulent statement, representation, or certification may result in criminal, civil, and/or administrative sanctions, including fines, penalties, and confinement for up to 5 years, (18 U.S.C. §§ 287, 1001 and 31 U.S.C. § 3729)

Summary of Materials Stored

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0157
(exp. 11/30/2023)

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number. This information is collected under the authority of Section 6(c) of the U.S Housing Act of 1937 and HUD regulations. HAs are responsible for contract administration to ensure that the work for project development is done in accordance with State laws and HUD requirements. The contractor/subcontractor reports provide details and summaries on payments, change orders, and schedule of materials stored for the project. The information will be used to ensure that the total development costs, identified in the ACC, are kept as low as possible and consistent with HUD construction requirements. Responses to the collection are necessary to obtain a benefit. The information requested does not lend itself to confidentiality.

Instructions: This form is for the Contractor to summarize the value of materials stored at the site (as shown on the schedule, form HUD-51003). Use a separate line for the contractor and each of his/her subcontractors. Prepare an original and one copy, attach form HUD-51003, and send to the Public Housing Agency with the Periodic Estimate for Partial Payment, form HUD-51001. **Payment Value.** No more than 90 percent of the estimated value of the stored materials will be allowed, and only the net amount will be carried to line 13 on the back of the Periodic Estimate for Partial Payment, form HUD-51001. **Signatures.** This form must be signed by those employees of the contractor and of the Public Housing Agency who prepare and check the Schedule of Materials Stored, form HUD-51003.

Name of Public Housing Agency	Supporting Periodic Estimate for Partial Payment Number	Period From (mm/dd/yyyy)	To (mm/dd/yyyy)
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Location of Project	Project Number
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Name of General Contractor	Contract Number
----------------------------	-----------------

Name of General Contractor or Subcontractor	Amounts
--	----------------

General Contractor	\$
--------------------	----

Subcontractors	\$
----------------	----

	Total	\$
	Less 10%	\$
	Net	\$

Prepared by	Date (mm/dd/yyyy)	Checked by	Date (mm/dd/yyyy)
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I certify that I or my authorized representatives have examined and checked in detail the invoices representing the cost of materials set forth in appended "Schedule of Materials Stored", form HUD-51003, dated (mm/dd/yyyy) _____ submitted by _____ consisting of _____ sheets with an indicated cost of \$ _____, and find that the net unit prices set forth in the schedule are the same or less than the invoices examined, and that such materials were suitably stored at the site of the development as of (date)(mm/dd/yyyy) _____.

Name of Owner	By (Authorized Representative)	Title	Date (mm/dd/yyyy)
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Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

**U.S. Department of Housing
and Urban Development**
Office of Public and Indian Housing

OMB Approval No. 2577-0157 (exp. 11/30/2023)

**Model Form of Agreement Between
Owner and Design Professional**

Model Form of Agreement Between Owner and Design Professional

U. S. Department of Housing
and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0157
(exp. 3/31/2020)

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number. These contracts between a HUD grantee (housing agency (HA)) and an architect/engineer (A/E) for design and construction services do not require either party to submit any materials to HUD. The forms provide a contractual agreement for the services to be provided by the A/E and establishes responsibilities of both parties pursuant to the contract. The regulatory authority is 2 CFR 200. These contractual agreements are required by Federal law or regulation pursuant to 2 CFR Part 200. Signing of the contracts is required to obtain or retain benefits. The contracts do not lend themselves to confidentiality.

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Introduction to Agreement

Agreement

made as of the _____ day of _____ in the year (yyyy) of _____

Between the **Owner** (Name & Address)

and the **Design Professional** (Name, Address and Discipline)

For the following **Project** (Include detailed description of Project, Location, Address, Scope and Program Designation)

The Owner and Design Professional agree as set forth below.

Article A: Services

A 1.0 Design Professional's Basic Services

A. 1.1 Areas of Professional's Basic Services. Unless revised in a written addendum or amendment to this Agreement, in plan-ning, designing and administering construction or rehabilitation of the Project, the Design Professional shall provide the Owner with professional services in the following areas:

- Architecture
- Site Planning
- Structural Engineering
- Mechanical Engineering
- Electrical Engineering
- Civil Engineering
- Landscape Architecture
- Cost Estimating
- Construction Contract Administration

A 1.2 Phases and Descriptions of Basic Services.

A. 1.2.1 Schematic Design/Preliminary Study Phase. After receipt of a Notice to Proceed from the Owner, the Design Professional shall prepare and deliver Schematic Design/Preliminary Study Documents. These documents shall consist of a presentation of the complete concept of the Project, including all major elements of the building(s), and site design(s), planned to promote economy both in construction and in administration and to comply with current program and cost limitations. The Design Professional shall revise these documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval. Additionally, the Design Professional shall make an independent assessment of the accuracy of the information provided by the Owner concerning existing conditions. Documents in this phase shall include:

- Site plan(s)
- Schedule of building types, unit distribution and bedroom count
- Scale plan of all buildings, and typical dwelling units
- Wall sections and elevations
- Outline specifications
- Preliminary construction cost estimates
- Project specific analysis of codes, ordinances and regulations
- Three dimensional line drawings

A. 1.2.2 Design Development Phase. After receipt of written approval of Schematic Design/Preliminary Study Documents, the Design Professional shall prepare and submit to the Owner Design Development Documents. The Design Professional shall revise these documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval. These documents shall include the following:

- Drawings sufficient to fix and illustrate project scope and character in all essential design elements
- Outline specifications
- Cost estimates and analysis
- Recommendations for phasing of construction
- Site plan(s)
- Landscape plan
- Floor plans
- Elevations, building and wall sections
- Updated three dimensional line drawings
- Engineering drawings

A. 1.2.3 Bidding, Construction and Contract Document Phase. After receipt of the Owner's written approval of Design Development Documents, the Design Professional shall prepare Construction Documents. After consultation with the Owner and Owner's attorney, if requested by the owner, the Design Professional shall also prepare and assemble all bidding and contract documents. The Design Professional shall revise these Bidding, Construction and Contract documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval. They shall, include in a detailed, manner all work to be performed; all material; workmanship; finishes and equipment required for the architectural, structural, mechanical, electrical, and site work; survey maps furnished by Owner; and direct reproduction of any logs and subsurface soil investigations. These documents shall include:

- Solicitation for Bids
- Form of Contract
- Special Conditions
- General Conditions
- Technical Specifications
- Plans and drawings
- Updated cost estimates

A. 1.2.4 Bidding and Award Phase. After written approval of Bidding, Construction and Contract Documents from the Owner, the Design Professional shall assist in administering the bidding and award of the Construction Contract. This shall include:

- Responding to inquiries
- Drafting and issuing addendum approved by Owner
- Attending prebid conference(s)
- Attending public bid openings
- Reviewing and tabulating bids
- Recommending list of eligible bids
- Recommending award
- Altering drawings and specifications as often as required to award within the Estimated Construction Contract Cost

A. 1.2.5 Construction Phase. After execution of the Construction Contract, the Design Professional shall in a prompt and timely manner administer the Construction Contract and all work re-quired by the Bidding, Construction and Contract Documents. The Design Professional shall endeavor to protect the Owner against defects and deficiencies in the execution and performance of the work. The Design Professional shall:

- o Administer the Construction Contract.
- o Conduct pre-construction conference and attend dispute resolution conferences and other meetings when requested by the Owner.
- o Review and approve contractor's shop drawings and other submittals for conformance to the requirements of the contract documents.
- o At the Owner's written request, and as Additional Service, procure testing from qualified parties.
- o Monitor the quality and progress of the work and furnish a written field report ☐ weekly, ☐ semi monthly, ☐ monthly, or ☐ This service shall be limited to a period amounting to 110% of the construction period as originally established under the construction contract unless construction has been delayed due to the Design professional's failure to properly perform its duties and responsibilities. The Owner may direct additional monitoring but only as Additional Services.
- o Require any sub-consultant to provide the services listed in this section where and as applicable and to visit the Project during the time that construction is occurring on the portion of the work related to its discipline and report in writing to the Design Professional.
- o Review, approve and submit to Owner the Contractor Requests for Payment.
- o Conduct all job meetings and record action in a set of minutes which are to be provided to the Owner.
- o Make modifications to Construction Contract Documents to correct errors, clarify intent or to accommodate change orders.
- o Make recommendations to Owner for solutions to special problems or changes necessitated by conditions encountered in the course of construction.
- o Promptly notify Owner in writing of any defects or deficiencies in the work or of any matter of dispute with the Contractor.
- o Negotiate, prepare cost or price analysis for and counter-sign change orders.
- o Prepare written punch list, certificates of completion and other necessary construction close out documents.
- o Prepare a set of reproducible record prints of Drawings showing significant changes in the work made during construction, including the locations of underground utilities and appurtenances referenced to permanent surface improvements, based on marked-up prints, drawings and other data furnished by the contractor to the Design Professional.

A. 1.2.6 Post Completion/Warranty Phase. After execution of the Certificate of Completion by the Owner, the Design Professional shall:

- o Consult with and make recommendations to Owner during warranties regarding construction, and equipment warranties.
- o Perform an inspection of construction work, material, systems and equipment no earlier than nine months and no later than ten months after completion of the construction contract and make a written report to the Owner. At the Owner's request, and by Amendment to the Additional Services section of this contract, conduct additional warranty inspections as Additional Services.
- o Advise and assist Owner in construction matters for a period up to eighteen months after completion of the project, but such assistance is not to exceed forty hours of service and one nonwarranty trip away from the place of business of the Design Professional.

A. 1.3 Time of Performance. The Design Professional's schedule for preparing, delivering and obtaining Owner's approval for Basic Services shall be as follows:

- o Schematic Design/Preliminary Study Documents within _____ calendar days for the date of the receipt of a Notice to Proceed.
- o Design Development Documents within _____ calendar days from the date of receipt of written approval by the Owner of Schematic Design/Preliminary Study documents.
- o Bidding, Construction and Contract Documents within _____ calendar days from the date of receipt of written approval by the Owner of Design Development Documents.

A. 2.0 Design Professional's Additional Services

A. 2.1 Description of Additional Services. Additional Services are all those services provided by the Design Professional on the Project for the Owner that are not defined as Basic Services in Article A, Section 1.2 or otherwise required to be performed by the Design Professional under this Agreement. They include major revisions in the scope of work of previously approved drawings, specifications and other documents due to causes beyond the control of the Design Professional and not due to any errors, omissions, or failures on the part of the Design Professional to carry out obligations otherwise set out in this Agreement.

A. 2.2 Written Addendum or Contract Amendment. All additional services not already expressly required by this agreement shall be agreed to through either a written addendum or amendment to this Agreement.

Article B: Compensation and Payment B.

1.0 Basic Services

B. 1.1 Fixed Fee for Basic Services. The Owner will pay the Design Professional for Basic Services performed as defined by A.1.2, a Fixed Fee (stipulated sum) of \$ _____ plus Reimbursable Expenses identified in Article B.2.0. Such

payment shall be compensation for all Basic Services required, performed, or accepted under this Contract.

B. 1.2 Payment Schedule. Progress payments for Basic Services for each phase of work shall be made in proportion to services performed as follows:

Phase	Amount
Schematic Design/Preliminary Study Phase	\$ _____
Design Development Phase	\$ _____
Bidding, Construction & Contract Document Phase	\$ _____
Bidding & Award Phase	\$ _____
Construction Phase	\$ _____
Post Completion/ Warranty Phase	\$ _____
Total Basic Services	\$ _____

B. 2.0 Reimbursables

B. 2.1 Reimbursable Expenses. The Owner will pay the Design Professional for the Reimbursable Expenses listed below up to a Maximum Amount of \$ _____ Reimbursable Expenses are in addition to the Fixed Fee for Basic Services and are for certain actual expenses incurred by the Design Professional in connection with the Project as enumerated below.

B. 2.1.1 Travel Costs. The reasonable expense of travel costs incurred by the Design Professional when requested by Owner to travel to a location that lies outside of a 45 mile radius of either the Project site, Design Professional's office (s), and Owner's office.

B. 2.1.2 Long Distance Telephone Costs. Long distance tele-phone calls and long distance telefax costs.

B. 2.1.3 Delivery Costs. Courier services and overnight delivery costs.

B. 2.1.4 Reproduction Costs. Reproduction and postage costs of required drawings, specifications, Bidding and Contract documents, excluding the cost of reproductions for the Design Professional or Subcontractor's own use.

B. 2.1.5 Additional Reimbursables. The Design Professional and Owner may agree in an addendum or amendment to this Agreement to include certain other expenses not enumerated above as Reimbursable Expenses. These Reimbursables shall not be limited by the Maximum Amount agreed to above. A separate Maximum Amount for these Reimbursables shall be established.

B. 3.0 Additional Services

B. 3.1 Payment for Additional Services. The Owner will pay the Design Professional only for Additional Services agreed to in an addendum or amendment to this Agreement executed by the Owner and the Design Professional pursuant to A.2. Payment for all such Additional Services shall be in an amount and upon the terms set out in such amendment or addendum and agreed upon by the parties. Each such amendment or addendum shall provide for a fixed price or, where payment for such Additional Services is to be on an hourly basis or other unit pricing method, for a

maximum amount; each such amendment or addendum shall also provide for a method of payment, including, at a minimum, whether payment will be made in partial payments or in lump sum and whether it will be based upon percentage of completion or services billed for.

B. 4.0 Invoicing and Payments

B. 4.1 Invoices. All payments shall require a written invoice from the Design Professional. Invoices shall be made no more frequently than on a monthly basis. Payments for Basic Services shall be in proportion to services completed within each phase of work. When requesting such payment, the invoice shall identify the phase and the portion completed. All invoices shall state the Agreement, name and address to which payment shall be made, the services completed and the dates of completion, and whether the invoice requests payment for Basic Services, Reimbursable or Additional Services. Invoices seeking payment for Reimbursable or Additional Services must provide detailed documentation.

B. 4.2 Time of Payment. Upon the Design Professional's proper submission of invoices for work performed or reimbursable expenses, the Owner shall review and, if the work is in conformance with the terms of the Agreement, make payment within thirty days of the Owner's receipt of the invoice.

Article C: Responsibilities

C. 1.0 Design Professional's Responsibilities

C. 1.1 Basic Services. The Design Professionals shall provide the Basic Service set out in Article A.1.0.

C. 1.2 Additional Services. When required under this Agreement or agreed to as set out in A.2.0, the Design Professional shall provide Additional Services on the Project.

C. 1.3 General Responsibilities. The Design Professional shall be responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other services, furnished by the Design Professional under this Agreement. The Owner's review, approval, acceptance of, or payment for Design Professional services shall not be construed as a waiver of any rights under this Agreement or of any cause of action for damages caused by Design Professional's negligent performance under this Agreement. Furthermore, this Agreement does not restrict or limit any rights or remedies otherwise afforded the Owner or Design Professional by law.

C. 1.4 Designing Within Funding Limitations. The Design Professional shall perform services required under this Contract in such a manner so as to cause an award of a Construction Contract(s) that does not exceed (1) \$ _____ or (2) an amount to be provided by the Owner in writing to the Design Professional prior to the commencement of Design Professional services. This fixed limit shall be called the Maximum Construction Contract Cost. The amount may be increased by the Owner, but only with written notice to the Design Professional. If the increase results in a change to the scope of work, an amendment to this Agreement will be required. The Design Professional and the Owner may mutually agree to decrease the Maximum Construction Contract Cost, but only by signing a written amendment to this Agreement. Should bids for the Construction Contract(s) exceed the Maximum Construction Contract Cost, the Owner has the right to require the Design Professional to perform redesigns,

rebids and other services necessary to cause an award of the Construction Contract within the Maximum Construction Contract Cost without additional compensation or reimbursement.

C. 1.5 Compliance with Laws, Codes, Ordinances and Regulations. The Design Professional shall perform services that conform to all applicable Federal, State and local laws, codes, ordinances and regulations except as modified by any waivers which may be obtained with the approval of the Owner. The Design Professional shall certify that Contract Documents will conform to all applicable laws, codes, ordinances and regulations. The Design Professional shall prepare all construction documents required for approval by all governmental agencies having jurisdiction over the project. The Design professional shall make all changes in the Bidding and Construction Documents necessary to obtain governmental approval without additional compensation or reimbursement, except in the following situations. If subsequent to the date the Owner issues a notice to proceed, revisions are made to applicable codes or non-federal regulations, the Design Professional shall be entitled to additional compensation and reimbursements for any additional cost resulting from such changes. The Design Professional, however, is obligated to notify the Owner of all significant code or regulatory changes within sixty (60) days of their change, and such notification shall be required in order for the Design Professional to be entitled to any additional compensation or reimbursement. Both the owner and design professional are responsible for ensuring that the design and construction comply with any applicable accessibility laws, including the Fair Housing Act (see 24 C.F.R. § 100.205), Sect. 504 of the Rehabilitation Act (Sect. 504), and the Americans with Disabilities Act (ADA). Compliance with Sect. 504 requires adherence to the Uniform Federal Accessibility Standards (See <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-aba-standards/ufas>) and compliance with the ADA requires adherence to the 2010 ADA standards (See https://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards_prt.pdf).

C. 1.6 Seal. Licensed Design Professionals shall affix their seals and signatures to drawings and specifications produced under this Agreement when required by law.

C. 1.7 Attendance at Conferences. The Design Professional or designated representative shall attend project conferences and meetings involving matters related to basic services covered under this contract. Attendance at community wide meetings shall be considered an additional service.

C. 2.0 Owner's Responsibilities

C. 2.1 Information. The Owner shall provide information regarding requirements for the project, including a program that shall set forth the Owner's objectives and schedule. The Owner shall also establish and update the Maximum Construction Cost. This shall include the Owner's giving notice of work to be performed by the Owner or others and not included in the Construction Contract for the Project. The Design Professional, however, shall be responsible to ascertain and know federal requirements and limitations placed on the Project.

C. 2.2 Notice of Defects. If the Owner observes or otherwise becomes aware of any fault or defect in the construction of the project or nonconformance with the Construction Contract, the Owner shall give prompt written notice of those faults, defects or nonconformance to the Design Professional.

C.2.3 Contract Officer. The Owner shall designate a Contract Officer authorized to act on its behalf with respect to the design and construction of the Project. The Contract Officer shall examine documents submitted by the Design Professional and shall promptly render decisions pertaining to those documents so as to avoid unreasonably delaying the progress of the Design Professional's work.

C. 2.4 Duties to Furnish. The Owner shall provide the Design Professional the items listed below.

C. 2.4.1 Survey and Property Restrictions. The Owner shall furnish topographic, property line and utility information as and where required. The Owner may at its election require the Design Professional to furnish any of these items as an Additional Service.

C. 2.4.2 Existing Conditions. The Owner shall provide the Design Professional any available "built drawings of buildings or properties, architect surveys, test reports, and any other written information that it may have in its possession and that it might reasonably assume affects the work.

C. 2.4.3 Waivers. The Owner shall provide the Design Professional information it may have obtained on any waivers of local codes, ordinances, or regulations or standards affecting the design of the Project.

C. 2.4.4 Minimum Wage Rates. The Owner shall furnish the Design Professional the schedule of minimum wage rates approved by the U.S. Secretary of Labor for inclusion in the solicitation and Contract Documents.

C. 2.4.5 Tests. When expressly agreed to in writing by both the Owner and the Design Professional, the Owner shall furnish the Design Professional all necessary structural, mechanical, chemical or other laboratory tests, inspections and reports required for the Project.

C. 2.4.6 Contract Terms. The Owner or its legal counsel may provide the Design Professional text to be incorporated into Bidding and Construction Contract Documents.

Article D: Contract Administration

D. 1.0 Prohibition of Assignment. The Design Professional shall not assign, subcontract, or transfer any services, obligations, or interest in this Agreement without the prior written consent of the Owner. Such consent shall not unreasonably be withheld when such assignment is for financing the Design Professional's performance.

D. 1.1 Ownership of Documents. All drawings, specifications, studies and other materials prepared under this contract shall be the property of the Owner and at the termination or completion of the Design Professional's services shall be promptly delivered to the Owner. The Design Professional shall have no claim for further employment or additional compensation as a result of exercise by the Owner of its full rights of ownership. It is understood, however, that the Design Professional does not represent such data to be suitable for re-use on any other project or for any other purpose. If the Owner re-uses the subject data without the Design Professional's written verification, such re-use will be at the sole risk of the Owner without liability to the Design Professional.

D. 1.2 Substitutions.

A. The Design Professional shall identify in writing principals and professional level employees and shall not substitute or replace principals or professional level employees without the prior approval of the Owner which shall not unreasonably be withheld.

B. The Design Professional's personnel identified below are considered to be essential to the work effort. Prior to diverting or substituting any of the specified individuals, the Design Professional shall notify the Owner reasonably in advance and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact on the contract. No diversion or substitution of such key personnel shall be made by the Design professional without the prior written consent of the Owner.

D. 1.3 Suspension. The Owner may give written notice to the Design Professional to suspend work on the project or any part thereof. The Owner shall not be obligated to consider a claim for additional compensation if the Design Professional is given written notice to resume work within 120 calendar days. If notice to resume work is not given within 120 calendar days, the Design Professional shall be entitled to an equitable adjustment in compensation.

D. 1.4 Subcontracts. The Design Professional will cause all applicable provisions of this Agreement to be inserted in all its subcontracts.

D. 1.5 Disputes. In the event of a dispute arising under this Agreement, the Design Professional shall notify the Owner promptly in writing and submit its claim in a timely manner. The Owner shall respond to the claim in writing in a timely manner. The Design Professional shall proceed with its work hereunder in compliance with the instructions of the Owner, but such compliance shall not be a waiver of the Design Professional's rights to make such a claim. Any dispute not resolved by this procedure may be determined by a court of competent jurisdiction or by consent of the Owner and Design Professional by other dispute resolution methods.

D. 1.6 Termination. The Owner may terminate this Agreement for the Owner's convenience or for failure of the Design Professional to fulfill contract obligations. The Owner shall terminate by delivering to the Design Professional a Notice of Termination specifying the reason therefore and the effective date of termination. Upon receipt of such notice, the Design Professional shall immediately discontinue all services affected and deliver to the Owner all information, reports, papers, and other materials accumulated or generated in performing this contract whether completed or in process. If the termination is for convenience of the Owner, the Owner shall be liable only for payment for accepted services rendered before the effective date of termination.

D. 1.7 Insurance. The Design professional shall carry Commercial or Comprehensive General Liability Insurance, Professional Liability Insurance (for a period extending two years past the date of completion of construction), and other insurance as are required by law, all in minimum amounts as set forth below. The Design Professional shall furnish the Owner certificates of insurance and they shall state that a thirty day notice of prior cancellation or change will be provided to the Owner. Additionally, the Owner shall be an additional insured on all Commercial or Comprehensive General liability policies.

Insurance	Limits or Amount

D. 1.8 Retention of Rights. Neither the Owner's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the Design Professional shall be and remain liable to the Owner in accordance with the applicable law for all damages to the Owner caused by the Design professional's negligent performance of any of the services furnished under this contract.

Article E: Additional Requirements

E. 1.0 Contract Provisions Required by Federal Law or Owner Contract with the U.S. Department of Housing and Urban Development (HUD).

E. 1.1 Contract Adjustments. Notwithstanding any other term or condition of this Agreement, any settlement or equitable adjustment due to termination, suspension or delays by the Owner shall be negotiated based on the cost principles stated at 48 CFR Subpart 31.2 and conform to the Contract pricing provisions of 2 CFR 200.

E. 1.2 Additional Services. The Owner shall perform a cost or price analysis as required by 2 CFR 200 prior to the issuance of a contract modification/amendment for Additional Services. Such Additional Services shall be within the general scope of services covered by this Agreement. The Design Professional shall provide supporting cost information in sufficient detail to permit the Owner to perform the required cost or price analysis.

E. 1.3 Restrictive Drawings and Specifications. In accordance with 2 CFR 200 and contract agreements between the Owner and HUD, the Design Professional shall not require the use of materials, products, or services that unduly restrict competition.

E. 1.4 Design Certification. Where the Owner is required by federal regulations to provide HUD a Design Professional certification regarding the design of the Projects (24 CFR 905), the Design Professional shall provide such a certification to the Owner.

E. 1.5 Retention and Inspection of Records. Pursuant to 2 CFR 200, access shall be given by the Design Professional to the Owner, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the Design Professional which are directly pertinent to that specific Contract for the purpose of making an audit, examination, excerpts, and transcriptions. All required records shall be retained for three years after the Owner or Design Professional and other subgrantees make final payments and all other pending matters are closed.

E. 1.6 Copyrights and Rights in Data. HUD has no regulations pertaining to copyrights or rights in data as provided in 2 CFR 200. HUD requirements, Article 45 of the General Conditions to the Contract for Construction (form HUD-5370) requires that contractors pay all royalties and license fees. All drawings and specifications prepared by the Design Professional pursuant to this contract will identify any applicable patents to enable the general contractor to fulfil the requirements of the construction contract.

E. 1.7 Conflicts of Interest. Based in part on federal regulations (2 CFR 200 and Contract agreement between the Owner and HUD, no employee, officer, or agent of the Owner (HUD grantee) shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when:

- (i) The employee, officer or agent,
- (ii) Any member of his or her immediate family,
- (iii) His or her partner, or
- (iv) An organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from Contractors, or parties to sub-agreements. Grantees and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents or by Contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

Neither the Owner nor any of its contractors or their subcontractors shall enter into any Contract, subcontract, or agreement, in connection with any Project or any property included or planned to be included in any Project, in which any member, officer, or employee of the Owner, or any member of the governing body of the locality in which the Project is situated, or any member of the governing body of the locality in which the Owner was activated, or in any other public official of such locality or localities who exercises any responsibilities or functions with respect to the Project during his/her tenure or for one year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee of the Owner, or any such governing body member or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of

his/her tenure any such interest, and if such interest is immediately disclosed to the Owner and such disclosure is entered upon the minutes of the Owner, the Owner, with the prior approval of the Government, may waive the prohibition contained in this subsection: Provided, That any such present member, officer, or employee of the Owner shall not participate in any action by the Owner relating to such contract, subcontract, or arrangement.

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

E. 1.8 Disputes. In part because of HUD regulations (2 CFR 200, this Design Professional Agreement, unless it is a small purchase contract, has administrative, contractual, or legal remedies for instances where the Design Professional violates or breaches Agreement terms, and provide for such sanctions and penalties as may be appropriate.

E. 1.9 Termination. In part because of HUD regulations (2 CFR 200), this Design Professional Agreement, unless it is for an amount of \$10,000 or less, has requirements regarding termination by the Owner when for cause or convenience. These include the manner by which the termination will be effected and basis for settlement.

E. 1.10 Interest of Members of Congress. Because of Contract agreement between the Owner and HUD, no member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this Contract or to any benefit to arise from it.

E. 1.11 Limitation of Payments to Influence Certain Federal Transaction. The Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions Act, Section 1352 of Title 31 U.S.C., provides in part that no appropriated funds may be expended by recipient of a federal contract, grant, loan, or cooperative agreement to pay any person, including the Design Professional, for influencing or attempting to influence an officer or employee of Congress in connection with any of the following covered Federal actions: the awarding of any federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

E. 1.12 Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.

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

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

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

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. Reserved.

H. Reserved.

E. 1.13 Reserved.

E. 1.14 Clean Air and Water. (Applicable to contracts in excess of \$150,000). Because of 2 CFR 200) and Federal law, the Design Professional shall comply with applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 1857h-4 transferred to 42 USC § 7607, section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15), on all contracts, subcontracts, and subgrants of amounts in excess of \$150,000.

E. 1.15 Energy Efficiency. Pursuant to Federal regulations (2 CFR 200) and Federal law, except when working on an Indian housing authority Project on an Indian reservation, the Design Professional shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163 codified at 42 U.S.C.A. § 6321 et. seq.).

E. 1.16 Prevailing Wages. In accordance with Section 12 of the U.S. Housing Act of 1937 (42 U.S.C. 1437j) the Design Professional shall pay not less than the wages prevailing in the locality, as determined by or adopted (subsequent to a determination under applicable State or local law) by the Secretary of HUD, to all architects, technical engineers, draftsmen, and technicians.

E. 1.17 Non-applicability of Fair Housing Requirements in Indian Housing Authority Contracts. Pursuant to 24 § CFR Part 1, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, and the Fair Housing Act (42 U.S.C. 3601-3620), which prohibits discrimination based on race, color, religion, sex, national origin, disability, or familial status in the sale or rental of housing do not apply to Indian Housing Authorities established by exercise of a Tribe's powers of self-government. Pursuant to 24 CFR § 1000.12, other civil rights statutes do apply to Indian Housing Authorities such as, Section 504, the Indian Civil Rights Act, and the Age Discrimination Act. (29 USC 794; 25 USC 1301.1303; and 42 USC 6101-6107 respectively).

E. 1.18 Prohibition Against Liens. The Design professional is Prohibited from placing a lien on the Owner's property. This prohibition shall be placed in all design professional subcontracts.

Article F: Other Owner Requirements (if any)

(Continue on additional pages as necessary)

This Agreement is entered into as of the day and year first written above.

Owner	Design Professional
<div><div></div><div>(Housing Authority)</div></div>	<div><div></div><div>(Firm)</div></div>
<div><div></div><div>(Signature)</div></div>	<div><div></div><div>(Signature)</div></div>
<div><div></div><div>(Print Name)</div></div>	<div><div></div><div>(Print Name)</div></div>
<div><div></div><div>(Print Title)</div></div>	<div><div></div><div>(Print Title)</div></div>

Addendum (If any)
(Additional Services and other modifications)

This is an Addendum to a Standard Form of Agreement between Owner and Design Professional signed and dated the _____ day
of _____ in the year (yyyy) of _____ between the Owner _____
and Design Professional _____ on
Project _____ The parties to that Agreement agree to modify the Agreement by the above
delineated Additional Services and modifications.

This Addendum is dated this _____ day of _____ in the year (yyyy) of _____

Owner

Design Professional

(Housing Authority)

(Firm)

(Signature)

(Signature)

(Print Name)

(Print Name)

(Print Title)

(Print Title)

**U.S. Department of Housing
and Urban Development**
Office of Public and Indian Housing

OMB Approval No. 2577-0157 (exp. 11/30/2023)

**Contract Provisions Required by Federal Law
or Owner Contract with the
U.S. Department of Housing and Urban Development**

Contract Provisions Required by Federal Law or Owner Contract with the U.S. Department of Housing and Urban Development

U. S. Department of Housing
and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0157
(exp. 3/31/2020)

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number.

These contracts between a HUD grantee (housing agency (HA)) and an architect/engineer (A/E) for design and construction services do not require either party to submit any materials to HUD. The forms provide a contractual agreement for the services to be provided by the A/E and establishes responsibilities of both parties pursuant to the contract. The regulatory authority is 2 CFR 200. These contractual agreements are required by Federal law or regulation pursuant to 2 CFR Part 200. Signing of the contracts is required to obtain or retain benefits. The contracts do not lend themselves to confidentiality.

1.0 Contract Provisions Required by Federal Law or Owner Contract with the U.S. Department of Housing and Urban Development (HUD).

1.1 Contract Adjustments. Notwithstanding any other term or condition of this Agreement, any settlement or equitable adjustment due to termination, suspension or delays by the Owner shall be negotiated based on the cost principles stated at 48 CFR Subpart 31.2

and conform to the Contract pricing provisions of 2 CFR 200.

1.2 Additional Services. The Owner shall perform a cost or price analysis as required by 2 CFR 200 prior to the issuance of a contract modification/amendment for Additional Services. Such Additional Services shall be within the general scope of services covered by this Agreement. The Design Professional shall provide supporting cost information in sufficient detail to permit the Owner to perform the required cost or price analysis.

1.3 Restrictive Drawings and Specifications. In accordance with 2 CFR 200 and contract agreements between the Owner and HUD, the Design Professional shall not require the use of materials, products, or services that unduly restrict competition.

1.4 Design Certification. Where the Owner is required by federal regulations to provide HUD a Design Professional certification regarding the design of the Projects (24 CFR 905.312), the Design Professional shall provide such a certification to the Owner.

1.5 Retention and Inspection of Records. Pursuant to 24 CFR 85.26(i)(10) and (11), access shall be given by the Design Professional to the Owner, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the Design Professional which are directly pertinent to that specific Contract for the purpose of making an audit, examination, excerpts, and transcriptions. All required records shall be retained for three years after the Owner or Design Professional and other subgrantees make final payments and all other pending matters are closed.

1.6 Copyrights and Rights in Data. HUD has no regulations pertaining to copyrights or rights in data as provided in 24 CFR 85.36. HUD requirements, Article 45 of the General Conditions to the Contract for Construction (form HUD-5370) requires that contractors pay all royalties and license fees. All drawings and specifications prepared by the Design Professional pursuant to this contract will identify any applicable patents to enable the general contractor to fulfil the requirements of the construction contract.

1.7 Conflicts of Interest. Based in part on federal regulations (2 CFR 200) and Contract agreement between the Owner and HUD, no employee, officer, or agent of the Owner (HUD grantee) shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when:

- (i) The employee, officer or agent,
- (ii) Any member of his or her immediate family,
- (iii) His or her partner, or

(iv) An organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from Contractors, or parties to sub-agreements. Grantees and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents or by Contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

Neither the Owner nor any of its contractors or their subcontractors shall enter into any Contract, subcontract, or agreement, in connection with any Project or any property included or planned to be included in any Project, in which any member, officer, or employee of the Owner, or any member of the governing body of the locality in which the Project is situated, or any member of the governing body of the locality in which the Owner was activated, or in any other public official of such locality or localities who exercises any responsibilities or functions with respect to the Project during his/her tenure or for one year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee of the Owner, or any such governing body member or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of his/her tenure any such interest, and if such interest is immediately disclosed to the Owner and such disclosure is entered upon the minutes of the Owner, the Owner, with the prior approval of the Government, may waive the prohibition contained in this subsection: Provided, That any such present member, officer, or employee of the Owner shall not participate in any action by the Owner relating to such contract, subcontract, or arrangement.

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

1.8 Disputes. In part because of HUD regulations (2 CFR 200), this Design Professional Agreement, unless it is a small purchase contract, has administrative, contractual, or legal remedies for instances where the Design Professional violates or breaches Agreement terms, and provide for such sanctions and penalties as may be appropriate.

1.9 Termination. In part because of HUD regulations (24 CFR 85.36(i)(2)), this Design Professional Agreement, unless it is for an amount of \$10,000 or less, has requirements regarding termination by the Owner when for cause or convenience. These include the manner by which the termination will be effected and basis for settlement.

1.10 Interest of Members of Congress. Because of Contract agreement between the Owner and HUD, no member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this Contract or to any benefit to arise from it.

1.11 Limitation of Payments to Influence Certain Federal Transaction. The Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions Act, Section 1352 of Title 31 U.S.C., provides in part that no appropriated funds may be expended by recipient of a federal contract, grant, loan, or cooperative agreement to pay any person, including the Design Professional, for influencing or attempting to influence an officer or employee of Congress in connection with any of the following covered Federal actions: the awarding of any federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

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

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

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

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will

post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the 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.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. Reserved.

H. Reserved.

1.13 Reserved.

1.14 Clean Air and Water. (Applicable to contracts in excess of \$100,000). Because of 24 CFR 85.36(i)(12) and federal law, the Design Professional shall comply with applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 1857h-4 transferred to 42 USC § 7607, section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15), on all contracts, subcontracts, and subgrants of amounts in excess of \$100,000.

1.15 Energy Efficiency. Pursuant to Federal regulations (2 C.F.R. 200) and Federal law, except when working on an Indian housing authority Project on an Indian reservation, the Design Professional shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163 codified at 42 U.S.C.A. § 6321 et. seq.).

1.16 Prevailing Wages. In accordance with Section 12 of the U.S. Housing Act of 1937 (42 U.S.C. 1437j) the Design Professional shall pay not less than the wages prevailing in the locality, as determined by or adopted (subsequent to a determination under applicable State or local law) by the Secretary of HUD, to all architects, technical engineers, draftsmen, and technicians.

1.17 Non-applicability of Fair Housing Requirements in Indian Housing Authority Contracts. Pursuant to 24 CFR section 905.115(b) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, and the Fair Housing Act (42 U.S.C. 3601-3620), which prohibits discrimination based on race, color, religion, sex, national origin, handicap, or familial status in the sale or rental of housing do not apply to Indian Housing Authorities established by exercise of a Tribe's powers of self-government.

1.18 Prohibition Against Liens. The Design professional is Prohibited from placing a lien on the Owner's property. This prohibition shall be placed in all design professional subcontracts.

**HUD-52158
Maintenance Wage Rate Determination****U.S. Department of Housing and Urban Development
Office of Davis-Bacon and Labor Standards**

Issuance of a Maintenance Wage Rate Determination to a Public Housing Agency, Tribally Designated Housing Entity, or the Department of Hawaiian Home Lands (collectively "Local Contracting Agencies" or "LCAs") does not require the LCA to submit any materials to HUD upon receipt. Issuance of this form sets an obligation on the receiving LCA to pay no less than the HUD-determined or adopted prevailing wage rates to maintenance laborers and mechanics employed in the LCA's operation of certain Public and Indian housing projects. This requirement is set by statute pursuant to Section 12(a) of the U.S. Housing Act of 1937, as amended (42 USC § 1437j(a)), and Sections 104(b) and 805(b) of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), as amended (25 USC § 4114(b) and 25 USC § 4225(b), respectively.)

Agency Name:

DBLS Agency ID No:

Wage Decision Type:

☐ Routine Maintenance☐ Nonroutine Maintenance

Effective Date:

Expiration Date:

The following wage rate determination is made pursuant to Section 12(a) of the U.S. Housing Act of 1937, as amended (Public Housing Agencies), or pursuant to Section 104(b) of the Native American Housing Assistance and Self-Determination Act of 1996, as amended (Tribally Designated Housing Entities), or pursuant to Section 805(b) of the Native American Housing Assistance and Self-Determination Act of 1996, as amended (Department of Hawaiian Home Lands). The Agency and its contractors shall pay to maintenance laborers and mechanics no less than the wage rate(s) indicated for the type of work they actually perform.

DBLS Staff Signature_____
Date_____
Name and Title

WORK CLASSIFICATION(S)

HOURLY WAGE RATES

BASIC WAGE

FRINGE BENEFIT(S) (if any)

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2577-0075. There is no personal information contained in this application. Information on activities and expenditures of grant funds is public information and is generally available for disclosure. Recipients are responsible for ensuring confidentiality when disclosure is not required. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

1. Definitions

Act - The United States Housing Act of 1937 (42 U.S.C. 1437 et., al), as amended.

Annual Contributions Contract (ACC) - This grant agreement between HUD and the HA which establishes the basic terms and conditions for the HA's public housing program.

Consolidated Annual Contributions Contract (consolidated ACC or CACC) - HUD's annual Grant Funding Exhibits to the ACC, which together with the ACC, constitute the annual grant agreement for the HA's public housing program.

Cooperation Agreement - Agreement(s) prescribed by HUD for execution by the HA and the local governing body relative to the cooperation of the local governing body in the development and operation of the project(s) and the obligation of the HA for payments in lieu of taxes (PILOT).

Fiscal Year - The HA fiscal year.

Grant Funding Exhibit - Exhibits to the ACC, in a form prescribed by HUD, reflecting HUD's commitment to provide grant funding that states the amount and term of Operating Fund and Capital Fund grant funding.

Grant Funding Increment - Each annual commitment of Operating Fund and Capital Fund by HUD to the HA for its public housing program.

Housing Agency (HA) - The entity that meets the statutory definition set forth under the Act, and which is subject to the CACC.

HUD - The U.S. Department of Housing and Urban Development.

Mixed-Finance - Development or modernization of public housing units where the public housing units are owned in whole or in part by an entity other than a PHA (i.e., Owner-Entity).

Operating Costs (Operating Expenditures or Operating Expenses) - Costs incurred by the HA for the necessary administration, operation and maintenance of a public housing Project; and which may be charged against operating receipts in accordance with the CACC and HUD requirements. Except as allowed by HUD, such costs do not include: any costs, expenses, expenditures, or charges incurred as part of the development or modernization of a public housing Project; or payment of principal or interest of bonds or notes related to the development or modernization of public housing.

Operating Receipts - All rents, revenues, income, and receipts accruing from, out of, generated by, or in connection with the ownership or operation of public housing, including grant funds received pursuant to HUD Requirements and is not limited to income from fees for services performed, the use or rental of real or personal property acquired with grant funds, the sale of commodities or items fabricated under the grant, license fees and royalties on patents and copyrights, and principal and interest on loans made with grant funds. Operating Receipts shall not include any funds received for the development or modernization of a Project, annual contributions pledged for payment of bonds or notes, or proceeds from the disposition of real property or rebates, credits, discounts and interest earned on any of them.

Interest on the Operating Receipts (including the investment of Operating Receipts), constitutes Operating Receipts.

Operating Reserve Account - An account allowed by HUD for a PHA from amounts by which the maximum payment of grant funds from the Operating Fund formula to the HA under the CACC (during a HA fiscal year) exceeds Operating Costs. This account may be used as the source of additional payments.

Owner Entity - An entity, including the HA, that owns Mixed-finance public housing units.

Project (Public Housing Project) - Low-income housing, developed, acquired, or assisted by HUD under the Act, other than under section 8 of the Act, and the improvement of such housing, and necessary appurtenances thereto. The term shall include all real and personal property, tangible and intangible, which is acquired or held by a HA in connection with a Project covered under the CACC.

Program (Public Housing program) - The HA's public housing program.

Program Receipts - Program receipts shall mean Operating Receipts and any other funds received by the HA for the development, modernization, sale or transfer of public housing projects. Subject to HUD Requirements, as defined in Paragraph 3, interest on the program receipts (including the investment of program receipts) constitutes program receipts. Program receipts shall only be used to pay for public housing program expenditures, unless otherwise allowed by HUD Requirements.

Public Housing - The term shall include public housing projects, as well as all other real and personal property, tangible and intangible, which is acquired, or held by, the HA in connection with its public housing program covered under a CACC.

Replacement Reserve Account - An account established by the HA, as approved by HUD. This account may be used as a source to fund any of the eligible capital activities outlined in its Capital Fund 5 Year Action Plan as approved by HUD under the Act.

2. Mission of HUD and HA.

a. HUD shall administer its Federal public housing program for the provision of decent, safe, and sanitary housing to eligible families in accordance with the CACC and all applicable HUD Requirements. HUD shall provide maximum responsibility and flexibility to HAs in making administrative decisions within all applicable statutes, executive orders, regulations and this ACC. HUD shall provide annual contributions, in the form of grants, to the HA in accordance with all applicable statutes, executive orders, regulations, and the CACC.

b. The HA shall use Program Receipts to provide decent, safe, and sanitary housing for eligible families in compliance with the Act and all HUD requirements. HA shall at all times develop and operate public housing projects in a manner that promotes serviceability, economy, efficiency, and stability of the projects, and the economic and social well-being of the tenants.

c. Except as otherwise provide by law the HA shall develop, modernize and operate all Projects covered by the CACC, in accordance with HUD Requirements. The HA shall also ensure compliance with such requirements by any other Owner Entity, contractor or subcontractor engaged in the development or operation of a project covered under the CACC.

3. HUD Requirements.

Except as otherwise provided by law, the HA must comply with the following "HUD Requirements", including all such requirements as amended from time to time:

a. The Act,

b. Regulations at Title 2 of the Code of Federal Regulations, and regulations issued by HUD at Title 24 of the Code of Federal Regulations);

c. Other federal statutes (including appropriations acts), executive orders and regulatory requirements and;

d. HUD-issued notices, and HUD-required forms, or agreements.

4. Cooperation Agreement(s).

During the development and operation of the project(s), the HA shall perform and comply with all applicable provisions of a Cooperation Agreement in the form prescribed by HUD, including the making of PILOT provided therein (or such lesser amount as may be prescribed by State law or agreed to by the local governing body); and shall at all times preserve and enforce its rights thereunder, and shall not terminate or amend the Cooperation Agreement(s) without the written approval of HUD.

5. Declaration of Restrictive Covenants.

a. *Record of Obligation* Upon the acquisition, development, or assistance of any real property with funds covered by the CACC, the HA shall execute and file for record against the Project and/or the owner's leasehold interest an instrument (which may be in the form of a declaration of trust, declaration of restrictive covenant, or such other document as approved or prescribed by HUD), confirming and further evidencing, but not limited to, (1) the obligation of the HA not to convey or encumber the Project except as expressly authorized in the CACC, (2) the obligation of the HA to develop, maintain and operate such Project in compliance with the CACC and HUD Requirements.

1. Such instrument and all amendments shall be duly recorded or filed for record to give public notice of their contents and to protect the rights and interests of HUD.

2. The HA shall furnish HUD with appropriate evidence of such recording or filing. From time to time, as additional real property is acquired, assisted, or disposed of (or removed from the public housing program) by the HA in connection with its public housing program, the HA shall promptly amend such instrument to incorporate all such real property and shall record the instrument, as amended. The HA shall furnish

HUD with appropriate evidence of such recording or filing.

b. *Mixed-Financed Projects.* The HA shall require the Owner Entity to execute and file for record against the Project, prior to the recordation of any other encumbrance, a declaration in the form approved by HUD.

1. The declaration shall confirm and evidence the Owner Entity's obligation, during the term of CACC covering the Project units and during such further period when such approval may be required by law as then in effect, to develop, maintain and operate the Project Units in compliance with the HUD Requirements. Such declaration and all amendments shall be duly recorded or filed for record to give public notice of their contents and to protect the rights and interests of HUD.

2. The declaration shall provide further that it may not be modified, amended or released without the prior written approval of HUD. The HA shall furnish HUD with appropriate evidence of such recording or filing.

6. Disposition and Encumbrances.

a. *Covenant Against Disposition and Encumbrances.* The HA shall not demolish or dispose of any project, or portion thereof, other than in accordance with the terms of the CACC and applicable HUD Requirements. With the exception of entering into dwelling leases with eligible families for dwelling units in the Projects covered by the CACC, and normal uses associated with the operation of the Project(s), the HA shall not in any way encumber any project, or portion thereof, without the prior written approval of HUD. In addition, unless approved in advance and in writing by HUD, the HA shall not pledge as collateral for a loan the assets of any Project covered under the CACC.

b. *Mixed-Finance Projects.* No transfer, conveyance, or assignment shall be made without the prior written approval of HUD of: (i) any interest of a managing member, general partner,

or controlling stockholder (any such interest being referred to as a "Controlling Interest") of the Owner Entity; or (ii) a Controlling Interest in any entity which has a Controlling Interest in the Owner Entity; or (iii) prior to the payment in full of all equity contributions described in the approved evidentiary documents, any other interest in the Owner Entity, or in any partner or member thereof.

1. Notwithstanding the foregoing, HUD consent is not required where a business organization that has a limited interest (non-controlling and non-managing) in the Owner Entity transfers a non-controlling and non-managing interest in the business organization provided that the Owner Entity: (i) provides HUD with written notice of such transfer; and (ii) certifies to HUD that the new owner of the limited interest remains obligated to fund its equity contribution in accordance with the terms of the HUD-approved organizational documents of the Owner Entity.

2. HUD will not unreasonably withhold, delay, or condition a request by the Owner Entity for HUD's consent to an internal reorganization of the corporate or partnership structure of the Owner Entity or any of the partners, members or stockholders of the Owner Entity.

3. Notwithstanding the foregoing, the prior approval of HUD and the HA will not be required for the exercise by any investor partner of the Owner Entity ("Investor") of its right pursuant to the Amended and Restated Limited Partnership Agreement of the Owner Entity ("Partnership Agreement") to remove the general partner of the Owner Entity and appoint the Investor or its Affiliate (i.e., any entity which directly or indirectly controls, or is controlled by, or is under common control with, the specified entity) as an interim general partner of the Owner Entity so long as the Investor gives prompt written notice to HUD of such removal and appointment ("Removal Notice"); provided that HUD and the HA consent will be required for the appointment of such interim general partner to extend beyond a ninety (90) day period and for the appointment of any entity (including the Investor or an affiliate thereof) as the permanent replacement general partner. Such 90-day period

will commence on the date of the Removal Notice ("Interim Replacement Period"). With the prior written approval of HUD and the HA, the Interim Replacement Period may be extended for an additional 90 days to allow the substitute general partner of the Owner Entity to find a replacement general partner acceptable to HUD and all other parties, provided that prior to the expiration of such additional 90-day period, the substitute general partner demonstrates that the Investor is continuing to fund (or has already funded) capital as required under the Partnership Agreement and that the Project continues to be operated in a manner consistent with HUD Requirements.

4. The consent of HUD and the HA will not be required for (i) any exercise by the Investor of its right to require the repurchase of its limited partnership interests as against the General Partner, any guarantor, and/or any affiliate thereof ("Repurchaser") pursuant to the Partnership Agreement, provided that the Investor provides prompt written notice to HUD and the HA at the time of its exercise of such right, and further provided that any resale of the limited partnership interests by the Repurchaser will be subject to the approval of HUD and the HA, such approval not to be unreasonably withheld, delayed or conditioned, or (ii) the exercise by the HA (or any approved Affiliate thereof) of its rights to acquire interests or the Property pursuant to the Right of First Refusal and Purchase Option Agreement of approximately even date herewith.

7. Insurance Requirements.

a. Except as otherwise provided by HUD, and in accordance with the CACC and HUD regulations and requirements, the HA shall procure adequate insurance to protect the HA from financial loss resulting from various hazards.

b. *Mandatory Insurance Coverage.* The following types of insurance are required:

1. Commercial Property. Each policy must be written with a blanket limit, on a replacement cost basis, and with an agreed value clause eliminating any coinsurance provision.

2. Commercial General Liability.
3. Workers Compensation and Employers Liability.

4. Owned and Non-Owned Automobile Liability.

5. Theft, Disappearance, and Destruction, only if the amount of cash and checks on hand at any one time exceeds the amount prescribed by HUD.

6. Employee Dishonesty.

7. Boiler and Machinery if steam boilers have been installed.

8. Flood Insurance for property located in a flood plain, as determined in the Federal Government's National Flood Insurance Program.

9. Lead-Based Paint Liability for HAs undergoing lead-based paint testing and abatement.

10. Fidelity Bond Coverage. The HA must carry adequate fidelity bond coverage, as required by HUD, of its officers, agents, or employees handling cash or authorized to sign checks.

c. *Optional Insurance Coverage.* The following insurance coverage are recommended and should be purchased if the HA determines that exposure exists:

1. Boiler and Machinery coverage is recommended if there is extensive central air conditioning, electrical transformers, or similar equipment.

2. Directors and Officers or Public Officials Liability.

3. Law Enforcement Liability: highly recommended where the exposure exists, and the Commercial General Liability insurer has excluded coverage.

d. *Authorized Insurance Companies.* Insurance must be purchased from an insurance company or other entity that is licensed or duly authorized to write insurance in the State where the HA is located.

e. *Certificates of Insurance.* At each renewal, the HA shall promptly have certificates of insurance submitted by the insurers to HUD describing the types of coverage, limits of insurance, policy numbers, and inception and expiration dates.

f. *Waivers and Self-Insurance Funds.* Requests for waivers of this section not to purchase any form of required insurance, or to establish a self-insurance fund in lieu of purchasing insurance, must be submitted in writing to HUD for approval with a justification as to why the request should be approved.

g. *Restoration.* The HA shall, to the extent that insurance proceeds permit, promptly restore, reconstruct, and/or repair any damaged or destroyed property of a Project, in accordance with all HUD Requirements, except with the written approval of HUD to the contrary.

h. *Mixed Finance Projects.* The HA, to the extent that insurance proceeds or condemnation award proceeds ("Proceeds") permit, shall promptly cause the restoration, reconstruction, and/or repair ("Restoration") of any damaged or destroyed property of the Project. The obligation for Restoration, to the extent Proceeds and other funds (if any are made available by the Owner Entity or the HA) permit, is a requirement with which the Owner Entity must comply to the extent Restoration is feasible. Each mortgagee must permit Restoration if feasible (rather than require application of Proceeds to reduction of debt). If Restoration is not feasible, then the following requirements, which shall be incorporated into the Regulatory and Operating Agreement (or other such agreement) between the HA and the Owner Entity (and ground lease, if applicable), and with which all mortgage documents encumbering the Project shall be consistent, shall apply:

1. *Partial loss.* In the event that less than all of the dwelling units in the Project are damaged, destroyed or lost as a result of casualty or condemnation, the following provisions shall apply:

(A) If the Proceeds are less than, or equal to, the sum of the existing outstanding mortgage debt secured by the Project, excluding any such debt held by the HA to secure a loan of Capital Funds, other public housing development funds, or Program Receipts for the Project ("Existing Mortgages"), and such Proceeds are applied to reduction of Existing Mortgages, the number of Project units in the Project shall remain the number required immediately prior to the occurrence of the casualty or condemnation.

(B) If the Proceeds are less than, or equal to, the sum of the Existing Mortgages but, at the election of the holders of the Existing Mortgages, are distributed among the holders thereof and the Authority, by application first to reduction of the Existing Mortgages in an aggregate amount not to exceed the proportion of the Proceeds equal to the ratio of non-Project units to all dwelling units in the Project, and then by payment to the HA of the balance of the Proceeds; then the percentage of units in the Project (and the percentage of bedrooms contained therein) which shall be Project units shall remain the same as required immediately prior to the casualty or condemnation.

(C) If the Proceeds are more than sufficient to pay off the Existing Mortgages, Proceeds in excess of the aggregate amount of the Existing Mortgages shall be applied in the following order of priority:

(i). To reduce any outstanding indebtedness to the HA for a loan of Capital Funds, other public housing development funds, or Program Receipts;

(ii). To reimburse the HA for any Development Grant Funds, Capital Funds or HOPE VI Grant Funds disbursed to the Owner Entity for development of the Development other than by loan;

(iii). To the HA an amount equal to the total "cost of construction" attributable to the Project units, less the sum of (a) and (b) above; and

(iv). To the Owner Entity.

(D) Following application of Proceeds in accordance with this subparagraph the percentage of dwelling units in the Project which shall be Project units (and the percentage of bedrooms contained therein) shall remain the same as required immediately prior to the casualty or condemnation; provided, however, that to the extent that the payment to the HA pursuant to clauses (A), (B), and (C) shall be less than the "cost of construction" attributable to the Project units, the number of remaining units in the Development which shall be Project units shall be increased by a number of units (rounded down) equal to (1) the amount by which such payments to the HA shall be less than the cost of construction, divided by (2) the quotient of (x) cost of construction, divided by (y) the number of Project units immediately prior to the occurrence of the casualty or condemnation.

2. *Total loss.* In the event that all of the units in the Project are damaged, destroyed or lost as a result of casualty or condemnation, the following provisions shall apply:

(A) The Proceeds shall be used to reduce the amount of the outstanding indebtedness of any mortgage(s) secured by the Project, including any mortgage(s) held by the HA, based on the priority recorded order of such mortgage(s);

(B) If the Proceeds are more than sufficient to pay off the amount of the outstanding indebtedness of all mortgage(s) secured by the Project, including any mortgage(s) held by the HA, then the amount of the Proceeds in excess of such indebtedness shall be applied in the following order of priority:

(i). To reduce any outstanding indebtedness to the HA for an unsecured loan of Capital Funds, or other HUD Development Funds or Program Receipts;

(ii). To reimburse the HA for any Capital Funds, other public housing funds or Program Receipts disbursed to the Owner Entity for development of the Project other than by loan;

(iii). To the HA an amount equal to the total "cost of construction" attributable to the Project units, less the sum of (a) and (b) above, and

(iv). To the Owner Entity;

For the purposes of this subsection, the term "cost of construction" shall mean the total cost of developing the Project, less land acquisition costs, if any, and non-capitalized soft costs.

8. Employer Requirements.

The HA shall comply with all State and Federal laws applicable to employee benefit plans and other conditions of employment. No Program Receipts may be used to pay any compensation for the services of members of the HA Board of Commissioners. None of the funds made available by the Act, for purposes authorized under section 8 and section 9 of the Act may be used by the HA for any amount of salary, including bonuses, for the chief executive officer of which, or any other official or employee of which, that exceeds the annual rate of basic pay payable for a position at level IV of the Executive Schedule.

9. Accounts, Records, and Government Access.

a. The HA shall maintain complete and accurate books of account for the Projects of the HA in such a manner as to permit the preparation of statements and reports in accordance with HUD Requirements, and to permit timely and effective audit.

b. The HA shall furnish HUD such financial and program data, reports, records, statements, and documents at such times, in such form, and accompanied by such supporting data as required by HUD. The HA is required to submit or access HUD's system of records (SORN). HUD's SORN is subject to the Privacy Act, the Freedom of Information Act, and other such applicable law. The HA must not release, without prior HUD approval, any and all information contained in such records.

c. The United States Government, including HUD and the Comptroller General, and its duly authorized representatives, shall have full and free access to all HA offices and facilities, and to all books, documents, and records of the HA relevant to the administration of the projects under this CACC, including the right to audit and make copies.

d. The HA shall engage and pay an independent public accountant to conduct audits that are required by HUD and HUD Requirements. The cost of audits required by HUD may be charged against program receipts.

e. The foregoing (a)-(d) shall apply to any records and/or any facilities operated or maintained by an agent or independent contractor for the HA that assists in fulfilling any obligation under this CACC. Any such agent or independent contractor that denies HUD or its duly authorized representatives from reviewing records, or denies HUD or its duly authorized representative entry to an office or facility, or prevents access to any office or facility, will be considered a denial made by the PHA.

10. Grant Funding

a. HUD shall make annual contributions in the form of grant funding in the amounts provided for the Public Housing Program as stated in the grant funding exhibits.

b. Grant funding is subject to each year's annual appropriations act and the requirements will be set forth in the grant funding exhibits. Appropriations may be reduced by HUD as directed by the Congress in an appropriations act. Grant funding may be reduced by an offset of a HA's funding, pursuant to a formula prescribed by Congress in an appropriations act. Grant funding may also be reduced or offset pursuant to a formula devised by HUD if Congress has invested HUD with the discretion to devise and implement a funding formula in the appropriations act. Grant funding may also be terminated, recaptured, withheld, suspended, reduced or such other actions taken in accordance with HUD Requirements.

c. Grant funding is calculated by applying applicable regulations in Title 24 of the Code of Federal Regulations unless Congress provides otherwise. HUD will grant funding to the HA in accordance with HUD Requirements, unless modified by an appropriations act. The appropriations act, not the Title 24 of the Code of Federal Regulations, will always take precedence in formulating each year's grant funding. Each year's grant funding exhibits will set forth the requirements. Any change in funding or requirements to a grant funding exhibit will be provided in a written notice to the HA.

d. The HUD notice of a revised funding exhibit(s) constitutes an amendment of the CACC.

11. Term

The grant funding exhibits state the first date and last dates of the terms for each funding increment.

12. Depository

a. The HA shall deposit and invest program receipts and investment securities received by or held for the account of the HA in connection with the development, operation and improvement of the projects under a CACC with HUD in accordance with the terms of the General Depository Agreement(s) and all investment requirements provided in HUD and Treasury Notices and Regulations. The General Depository Agreement shall be in the form prescribed by HUD and must be executed by the HA and the depository. Immediately upon the execution of any General Depository Agreement, the HA shall furnish to HUD such executed or conformed copies thereof as HUD may require. A General Depository Agreement shall not be terminated except after 30 days notice to HUD.

b. The HA shall maintain records that identify the source and application of funds in such a manner as to allow HUD to determine that all funds are and have been expended in accordance with HUD Requirements. The HA may only use Program Receipts for: (1) the payment of the costs of development and operation of the Projects under

the CACC with HUD; (2) the purchase of investment securities as approved by HUD; and (3) such other purposes as may be specifically approved by HUD. Except as approved by HUD, and consistent with HUD Requirements, grant funds are not fungible.

13. Termination of a Project. If any Project covered by this ACC is terminated, all related Program Receipts shall, in accordance with the terms of this CACC and HUD Requirements, become part of another Project administered by the HA. If no public housing Project(s) exists, the remaining personal and real property, and program receipts, shall be distributed (including the possible remittance to HUD) as directed by HUD, consistent with HUD Requirements.

14. Notices, Defaults, Remedies.

a. Any notice required or permitted to be given under this ACC or CACC shall be in writing, signed by a duly authorized official, and addressed, if to the HA, to the principal office of the HA, and if to HUD, to the HUD office with jurisdiction over the HA, unless otherwise directed by regulation or other HUD Requirements.

b. Upon the occurrence of a substantial default by the HA, as determined by HUD, HUD shall be entitled to any or all of the remedies set forth below. A substantial default is a serious and material violation of any one or more of the covenants contained in the CACC. Events of substantial default shall include, but shall not be limited to, any of the following occurrences: (1) failure to maintain and operate the Project(s) under this ACC in a decent, safe, and sanitary manner; (2) the disposition or encumbrance of any Project or portion thereof without HUD approval; (3) failure of the HA to comply with any civil rights requirements applicable to the HA and the Project(s); (4) abandonment of any Project by the HA, or if the powers of the HA to operate the public housing program in accordance with the provisions of this ACC are curtailed or limited to an extent that will prevent the accomplishment of the objectives of this ACC; (5) failure to carry out modernization or development in a timely, efficient and effective

manner; and (6) termination of tax exemption (either real or personal property) on behalf of a Project covered under the CACC.

c. Delivery of a notice of substantial default shall be required before the exercise of any remedy permitted under this ACC. Such notice shall: (1) identify the specific covenants, statutes, executive orders, or regulations alleged to have been violated; (2) identify the specific events, actions, failure to act, or conditions that constitute the alleged substantial default; and (3) provide a specific timeframe for the HA to cure the substantial default, taking into consideration the nature of the default.

d. Except in cases involving clear and apparent fraud, serious criminal behavior, or emergency conditions that pose an imminent threat to life, health, or safety, the HA shall have the right to appeal any such notice received from the HUD office with jurisdiction over the HA. Such informal appeals shall be in writing and shall be submitted within ten (10) working days from the date of the HA's receipt of such notice. Appeals of the action of a HUD Office shall be made to the Assistant Secretary for Public and Indian Housing, or such other official as shall be a successor thereto.

e. Upon the occurrence of a substantial default, or the expiration of any applicable cure period provided by HUD, the HA shall: (1) convey to HUD title to the Project(s) as demanded by HUD if, in the determination of HUD (which determination shall be final and conclusive), such conveyance of title is necessary to achieve the purposes of the Act; or (2) deliver possession and control of the Project(s) to HUD.

f. Nothing contained in this ACC shall prohibit or limit HUD from the exercise of any other right or remedy existing under applicable law, or available at equity. HUD's exercise or non-exercise of any right or remedy under this ACC or CACC shall not be construed as a waiver of HUD's right to exercise that or any other right or remedy at any time.

g. If HUD shall acquire title to, or possession of the Project(s), HUD shall re-convey or redeliver possession of the project(s) to the HA, or to any successor recognized by HUD: (1) upon a determination by HUD that the substantial default has been cured and that the Project(s) will thereafter be operated in accordance with the terms of the CACC; or (2) after the termination of HUD's obligation to make payments, unless there are any obligations or covenants of the HA to HUD that are then in default.

h. HUD may at any time by notice to the HA declare this ACC or the CACC terminated with respect to any project if:

1. The HA has made any fraudulent or willful misrepresentation of any material fact in any document or data submitted to HUD as a basis for the CACC or as an inducement to HUD to enter into the CACC; or

2. a substantial default exists in connection with any of the Projects.

i. *Mixed Finance Projects.* In addition to the above the following shall apply to Mixed-Finance Projects.

1. Each of the following shall also constitute an event of substantial default under the CACC:

(A) The drawdown of Capital Funds, Development Grant Funds, or other public housing funds, as applicable, under a Mixed Finance proposal in amounts greater than authorized, or in amounts greater than allowed by HUD Requirements;

(B) Breach of any approved performance schedule; or

(C) Serious and material breach of any terms, covenants, agreements, provisions, or warranties of:

(i). the HA which, in the opinion of HUD, adversely affects the performance obligations of the HA, the Owner Entity, or other participating parties, Amendment; and

(ii). the Owner Entity, partner, or other participating party, made in any agreement submitted to HUD as part of the evidentiary materials which, in the opinion of HUD, adversely affects the performance obligations of the HA, the Owner Entity, partner, or other participating parties.

2. HUD shall permit an Owner Entity, partner, or lender to participate, and may in its discretion, permit any other participating party to participate, in any appeal from a notice of substantial default delivered by HUD to the HA pursuant to this ACC with respect to a Project.

3. During the term of any agreement between the HA and Owner Entity, and so long as the Owner Entity shall not be in default of its obligations thereunder, HUD agrees that in the event of the substantial default by the HA under the CACC, HUD shall exercise any remedies or sanctions authorized under the CACC, including taking possession of the HA's interest in the Mixed Finance Project, in such manner as not to disturb the Owner Entity's rights under any such agreements.

4. Any rights of the mortgagee under a Note and First Mortgage (if any), including the right to exercise all remedies specified therein, shall not be subordinate to any other obligations imposed upon the Project, except as such obligations (1) shall be reflected in the Declaration of Restrictive Covenants, as required by the CACC, or a memorandum of lease (if applicable), and/or any other recorded instrument which shall have been recorded prior to the lien of the First Mortgage, or (2) shall be the subject of a subordination agreement with such mortgagee.

15. HUD in Possession of Project(s).

a. During any Period in which HUD holds title to or possession of the projects after a substantial default by the HA, HUD shall develop and/or operate such project(s) as nearly as practicable in accordance with the provisions of the CACC.

b. During any such period, HUD may, in the name and on behalf of the HA, or in its own name and on its own behalf (as HUD shall solely determine), exercise any and all rights of the HA under the CACC, and perform any and all obligations of the HA under the CACC. Nothing herein shall be deemed to make the action(s) or omission(s) of the HA attributable to HUD.

16. Conflict of Interest.

a. HAs shall maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts for which program receipts will be or are expended. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The HA's procedures must avoid acquisition of unnecessary or duplicative items. The HA must disclose in writing any potential conflict of interest to HUD.

b. The HA, its contractors and subcontractors shall not enter into any contract, subcontract, or arrangement in connection with a project under the CACC in which any of the following classes of people has an interest, direct

or indirect, during his or her tenure or for one year thereafter:

1. Any present or former member or officer of the governing body of the HA, or any member of the officer's immediate family. There shall be excepted from this prohibition any present or former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the resident corporation, the HA or a business entity.

2. Any employee of the HA who formulates policy or who influences decisions with respect to the Project(s), or any member of the employee's immediate family, or the employee's partner.

3. Any public official, member of the local governing body, or State or local legislator, or any member of such individuals' immediate family, who exercises functions or responsibilities with respect to the project(s) or the HA.

4. Any member of these classes of persons must disclose the member's interest or prospective interest to the HA.

5. The requirements of this subsection may be waived by HUD for good cause, if the prohibited contract, subcontract or arrangement is otherwise permitted under State and local law. No person for whom a waiver is requested may exercise responsibilities or functions with respect to the contract, subcontract or arrangement to which the waiver pertains.

6. The provisions of this subsection (b) shall not apply to the General Depository Agreement entered into with an institution regulated by a Federal agency, or to utility service for which the rates are fixed or controlled by a State or local agency.

c. The HA shall not hire an employee in connection with a project under this ACC if the prospective employee is an immediate family member of any person belonging to one of the following classes:

1. Any present or former member or officer of the governing body of the HA. There shall be excepted from this prohibition any former tenant commissioner who does not serve on the governing body of a resident corporation, and who does not occupy a policymaking position with the HA.

2. Any employee of the HA who formulates policy or who influences decisions with respect to the project(s).

3. Any public official, member of the local governing body, or State or local legislator, who exercises functions or responsibilities with respect to the project(s) or the HA.

d. The prohibition referred to in subsection (c) shall remain in effect throughout the class member's tenure and for one year thereafter.

e. A class member shall disclose to the HA the member's familial relationship to the prospective employee.

f. For purposes of this section, the term "immediate family member" means: the spouse, mother, father, mother-in-law, father-in-law, brother, sister, brother-in-law, or sister-in-law, or child of a covered class member (whether related as a full blood relative, or as a "half" or "step" relative, e.g., a half-brother or stepchild).

g. In addition to any other applicable conflict of interest requirements, including those provided herein, HAs must also maintain written standards of conduct covering conflicts of interest and governing the performance of its Board Member, executives, and employees engaged in the administration and operation of Projects covered by the CACC.

1. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from residents residing in Projects or participating in programs covered by the CACC. However, HAs may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

2. If the HA has a parent, affiliate, or subsidiary organization that is not a state or local government, the HA must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the HA is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization; or in administering or operating a project involving a related organization.

h. Consistent with this section and HUD Requirements, the HA shall ensure that tenants served directly by the HA serve on the governing body of the HA.

17. Civil Rights Requirements.

a. The HA shall comply with all statutory, regulatory, and executive order requirements pertaining to civil rights, equal opportunity, and nondiscrimination, as those requirements now exist, or as they may be enacted, promulgated, or amended from time to time. These requirements include, but shall not be limited to, compliance with at least the following authorities: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d; 24 CFR part 1); the Fair Housing Act (42 U.S.C. 3601-3619; 24 CFR part 100); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794; 24 CFR part 8); (the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107; 24 CFR part 146); the Americans with Disabilities Act (Pub. L. 101-336, approved July 26, 1990; 28 CFR part 35); Executive

Order 11063 on Equal Opportunity in Housing (24 CFR part 107); Executive Order 11246 on Equal Employment Opportunity, as amended by Executive Order 11375 (41 CFR part 60); and Executive Order 12892 on Affirmatively Furthering Fair Housing.

b. In connection with the development or operation of any Project, the HA shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, age, or national origin. The HA shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The HA shall insert the foregoing provision (modified only to show the particular contractual relationship) in all its contracts in connection with the development or operation of any Project, except contracts for standard commercial supplies or raw materials and contracts referred to in subsection (C) of this section, and shall require all contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. The HA shall post at the Projects, in conspicuous places available to employees and applicants for employment, notices to be provided by HUD setting forth the provisions of this nondiscriminatory clause.

c. The HA shall incorporate the language required by Executive Order 11246, codified at 41 CFR §60-1.4(b) (or any successor provision), into any contract for construction work, or any modification thereof, which is paid for in whole or in part with funds obtained under this ACC. In addition, the HA agrees that it will be bound by the equal employment opportunity provisions set forth at 41 CFR §60-1.4(b) (or any successor provision) with respect to its own employment practices when it uses its own staff (force account) to carry out Federally assisted construction work.

18. Members or Delegates to Congress.

No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this ACC or to any benefits which may arise from it. (As used in this section, the term "resident commissioner" refers to an individual appointed to oversee a territory or possession of the United States of America, e.g., Guam.)

19. Rights of Third Parties.

Nothing in this ACC shall be construed as creating any right of any third party to enforce any provision of the ACC, the CACC, or to assert any claim against HUD or the HA.

20. Waiver or Amendment.

Any right or remedy that HUD may have under this ACC may be waived in writing by HUD without the execution of a new or supplemental agreement, or by mutual agreement of the parties to this ACC. This agreement may be amended in writing: Provided, that none of the provisions of this ACC may be modified or amended so as to impair HUD's obligation to pay any annual contributions that have been pledged as security for any obligations of the HA.

Terms and Conditions

**Constituting Part A of a
Consolidated Annual Contributions Contract
Between Housing Authority and
the United States of America**

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This Annual Contributions Contract ("ACC"), No. _____, is entered into as of this ____ day of _____, 199__ by and between the United States of America, acting by and through the Secretary of Housing and Urban Development, ("HUD") and _____ (the "HA"). The parties to this ACC may have previously entered into Consolidated ACCs whose terms and conditions have become obsolete through the subsequent passage of legislation or the promulgation of regulations by HUD. The parties wish to resolve this obsolescence by entering into this ACC, which shall supersede the most recent Consolidated ACC entered into between the HA and HUD bearing the same ACC number as this Consolidated ACC, and which incorporates by reference into this ACC those regulations issued by HUD for the development, modernization, and operation of public and Indian housing projects contained in Title 24 of the Code of Federal Regulations, as said Title shall be amended from time to time. Nothing herein shall release the HA from compliance with all applicable laws, executive orders, and regulations that are not specifically incorporated herein by reference.

This ACC covers all project(s) listed under the most recent Consolidated ACC entered into between HUD and the HA bearing the same ACC number as this ACC, and any amendments thereto, as well as any additional project(s) that may be added as a result of future amendments to this ACC. This ACC shall remain in effect with respect to such projects for the maximum period required by law, or as may be established by HUD. If this ACC consolidates previous ACCs executed by the parties, it shall remain in effect for the maximum period remaining under such previously executed ACCs, including any extension of the original ACC term based upon the HA's receipt of modernization and operating subsidies.

Section 1 - Consolidation of Annual Contributions Contract.

This ACC supersedes the most recent Consolidated ACC entered into between HUD and the HA bearing the same ACC number as this ACC (including both Parts I and II), and any amendments thereto, provided that this novation shall in no way affect obligations outstanding, accounts due, or other actions taken pursuant to such previous ACCs, all of which matters shall be administered pursuant to and under this ACC.

Section 2 - Definitions.

ACC - Consolidated Annual Contributions Contract between HUD and the HA, as may be amended herein, consisting of Part A (which sets forth requirements applicable to all projects) and Part B (which sets forth additional requirements that apply only to certain types of projects).

Act - the United States Housing Act of 1937, as amended.

Cooperation Agreement - agreement(s) prescribed by HUD for execution by the HA and the local governing body relative to the cooperation of the local governing body in the development and operation of the project(s) and the obligation of the HA for payments in lieu of taxes, due to the exemption of the project from all real and personal property taxes.

HA - a public housing agency as defined in the Act, including an Indian housing authority.

HUD approval - prior written approval from HUD.

"Operating receipts" and "Operating expenditures" - Operating receipts shall mean all rents, revenues, income, and receipts accruing from, out of, or in connection with the ownership or operation of such project. Operating receipts shall not include any funds received for development or modernization of a project, annual contributions pledged for payment of bonds or notes, or proceeds from the disposition of real property. Operating expenditures shall mean all costs incurred by the HA for administration, maintenance and other costs and charges that are necessary for the operation of the project. Operating expenditures shall not include any costs incurred as part of the development or modernization cost, or payment of principal or interest of bonds or notes.

Project - public and Indian housing developed, acquired, or assisted by HUD under the Act, other than under section 8 of the Act, and the improvement of such housing. The term shall include all real and personal property, tangible and intangible, which is acquired or held by a HA in connection with a project covered under this ACC.

Section 3 - Mission of HUD.

HUD shall administer the Federal public and Indian housing program for the provision of decent, safe, and sanitary housing to eligible families in accordance with this ACC and all applicable statutes, executive orders, and regulations. HUD shall provide maximum responsibility and flexibility to HAs in making administrative decisions within all applicable statutes, executive orders, regulations and this ACC. HUD shall provide annual contributions to the HA in accordance with all applicable statutes, executive orders, regulations, and this ACC.

Section 4 - Mission of the HA.

The HA shall at all times develop and operate each project solely for the purpose of providing decent, safe, and sanitary housing for eligible families in a manner that promotes serviceability, economy, efficiency, and stability of the projects, and the economic and social well-being of the tenants.

Section 5 - Covenant to Develop and Operate.

The HA shall develop and operate all projects covered by this ACC in compliance with all the provisions of this ACC and all applicable statutes, executive orders, and regulations issued by HUD, as they shall be amended from time to time, including but not limited to those regulations promulgated by HUD at Title 24 of the Code of Federal Regulations, which are hereby incorporated into this ACC by reference as if fully set forth herein, and as such regulations shall be amended from time to time. The HA shall also ensure compliance with such requirements by any contractor or subcontractor engaged in the development or operation of a project covered under this ACC.

Section 6 - Cooperation Agreement(s).

During the development and operation of the project(s), the HA shall perform and comply with all applicable provisions of the Cooperation Agreement(s), in the form prescribed by HUD, including the making of payments in lieu of taxes provided therein (or such lesser amount as may be prescribed by State law or agreed to by the local governing body), shall at all times preserve and enforce its rights thereunder, and shall not terminate or amend the Cooperation Agreement(s) without the written approval of HUD.

Section 7 - Covenant Against Disposition and Encumbrances.

The HA shall not demolish or dispose of any project, or portion thereof, other than in accordance with the terms of this ACC and applicable HUD requirements. With the exception of entering into dwelling leases with eligible families for dwelling units in the projects covered by this ACC, and normal uses associated with the operation of the project(s), the HA shall not in any way encumber any such project, or portion thereof, without the prior approval of HUD. In addition, the HA shall not pledge as collateral for a loan the assets of any project covered under this ACC.

Section 8 - Declaration of Trust.

Promptly upon the acquisition of the site of any project, the HA shall execute and deliver an instrument (which may be in the form of a declaration of trust, a trust indenture, or such other document as may be approved by HUD), confirming and further evidencing, among other things, the covenant of the HA not to convey or encumber the project except as expressly authorized in this ACC. Such instrument and all amendments shall be duly recorded or filed for record wherever necessary to give public notice of their contents and to protect the rights and interests of HUD and of any bondholders. The HA shall furnish HUD with appropriate evidence of such recording or filing. From time to time, as additional real property is acquired by the HA in connection with the projects, the HA shall promptly amend such instrument to incorporate all such real property and shall record the instrument, as amended.

Section 9 - Depository Agreement and General Fund.

(A) The HA shall deposit and invest all funds and investment securities received by or held for the account of the HA in connection with the development, operation and improvement of the projects under an ACC with HUD in accordance with the terms of the General Depository Agreement(s). The General Depository Agreement shall be in the form prescribed by HUD and must be executed by the HA and the depository. Immediately upon the execution of any Depository Agreement, the HA shall furnish to HUD such executed or conformed copies thereof as HUD may require. A Depository Agreement shall not be terminated except after 30 days notice to HUD.

(B) All monies and investment securities received by or held for the account of the HA in connection with the development, operation and improvement of projects in accordance with an ACC with HUD shall constitute the "General Fund."

(C) The HA shall maintain records that identify the source and application of funds in such a manner as to allow HUD to determine that all funds are and have been expended in accordance with each specific program regulation and requirement. The HA may withdraw funds from the General Fund only for: (1) the payment of the costs of development and operation of the projects under ACC with HUD; (2) the purchase of investment securities as approved by HUD; and (3) such other purposes as may be specifically approved by HUD. Program funds are not fungible; withdrawals shall not be made for a specific program in excess of the funds available on deposit for that program.

Section 10 - Pooling of Funds.

(A) The HA may deposit into an account covered by the terms of the General Depository Agreement any funds received or held by the HA in connection with any project operated by the HA under the provisions of this ACC.

(B) The HA may also deposit into an account covered by the General Depository Agreement, by lump-sum transfers of funds from the depositories of other projects or enterprises of the HA in which HUD has no financial interest, amounts necessary for current expenditures of items chargeable to all projects and enterprises of the HA.

(C) The HA shall not withdraw from any of the funds or accounts authorized under this section amounts for the projects under ACC, or for the other projects or enterprises, in excess of the amount then on deposit in respect thereto.

Section 11 - Operating Budget.

(A) The HA shall prepare and have approved by its Board of Commissioners an operating budget for each of its fiscal years in a manner, and using such forms, as prescribed by HUD. The HA shall submit a calculation of operating subsidy eligibility in the manner prescribed by HUD in regulations in Title 24 of the Code of Federal Regulations. HUD shall review the calculation and, if correct, and subject to the availability of funds, take action within 45 days of submission to obligate the funds and approve a payment schedule, unless the HA is notified that it must submit an operating budget as provided in (B) below. HUD may revise or amend the subsidy calculation to bring it into conformity with regulatory requirements. The HA shall submit revised calculations in support of mandatory or other adjustments based on procedures and deadlines prescribed by HUD.

(B) If HUD directs the HA to submit an operating budget because it has failed to achieve certain specified operating standards, or for other reasons which in HUD's determination require it, HUD shall, within 45 days of receipt of the complete operating budget, review and approve the operating budget if the plan of operation and the amounts included therein are reasonable. If HUD disapproves any proposed operating budget, or approves such budget with modifications, the HA shall be notified in writing and be furnished with an explanation of the reasons for such disapproval or modified approval. Any HA that is required to submit an operating budget may, at any time prior to thirty days before the end of the HA fiscal year, submit to HUD a proposed revision of any approved operating budget.

(C) HUD shall not in any Federal fiscal year approve any estimate or revision of a HA's operating budget in an amount which, together with the amount of all operating subsidies then contracted for by HUD, would exceed the amount as determined by HUD of contracting authorization for operating subsidies under the Act. HUD shall not be obligated to make any payments on account of operating subsidies in an amount in excess of the amount specifically approved by HUD.

(D) The HA shall not incur any operating expenditures except pursuant to an approved operating budget. If unbudgeted expenditures are incurred in emergencies to eliminate serious hazards to life, health and safety, the operating budget shall be amended accordingly.

Section 12 - Civil Rights Requirements.

(A) The HA shall comply with all statutory, regulatory, and executive order requirements pertaining to civil rights, equal opportunity, and nondiscrimination, as those requirements now exist, or as they may be enacted, promulgated, or amended from time to time. These requirements include, but shall not be limited to, compliance with at least the following authorities: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d; 24 CFR part 1); the Fair Housing Act (42 U.S.C. 3601-3619; 24 CFR part 100); section 504 of the Rehabilitation Act of

1973 (29 U.S.C. 794; 24 CFR part 8); (the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107; 24 CFR part 146); the Americans with Disabilities Act (Pub. L. 101-336, approved July 26, 1990; 28 CFR part 35); Executive Order 11063 on Equal Opportunity in Housing (24 CFR part 107); Executive Order 11246 on Equal Employment Opportunity, as amended by Executive Order 11375 (41 CFR part 60); and Executive Order 12892 on Affirmatively Furthering Fair Housing. An Indian Housing Authority established pursuant to tribal law shall comply with applicable civil rights requirements, as set forth in Title 24 of the Code of Federal Regulations.

(B) In connection with the development or operation of any project, the HA shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, age, or national origin. The HA shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The HA shall insert the foregoing provision (modified only to show the particular contractual relationship) in all its contracts in connection with the development or operation of any project, except contracts for standard commercial supplies or raw materials and contracts referred to in subsection (C) of this section, and shall require all contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. The HA shall post at the projects, in conspicuous places available to employees and applicants for employment, notices to be provided by HUD setting forth the provisions of this nondiscriminatory clause.

(C) The HA shall incorporate the language required by Executive Order 11246, codified at 41 CFR §60-1.4(b) (or any successor provision), into any contract for construction work, or any modification thereof, which is paid for in whole or in part with funds obtained under this ACC. In addition, the HA agrees that it will be bound by the equal employment opportunity provisions set forth at 41 CFR §60-1.4(b) (or any successor provision) with respect to its own employment practices when it uses its own staff (force account) to carry out Federally assisted construction work.

Section 13 - Insurance Requirements.

(A) Except as otherwise provided by HUD, the HA shall procure adequate insurance to protect the HA from financial loss resulting from various hazards if the HA determines that exposure to certain hazards exists. The types of insurance required, or that should be purchased, and other requirements with respect to insurance coverage are listed in Part B, Attachment VII, of this ACC.

(B) The HA shall, to the extent that insurance proceeds permit, promptly restore, reconstruct, and/or repair any damaged or destroyed property of a project, except with the written approval

of HUD to the contrary.

Section 14 - Employer Requirements.

(A) The HA shall comply with all tribal, State and Federal laws applicable to employee benefit plans and other conditions of employment.

(B) No funds of any project may be used to pay any compensation for the services of members of the HA Board of Commissioners.

Section 15 - Books of Account, Records, and Government Access.

(A) The HA must maintain complete and accurate books of account for the projects of the HA in such a manner as to permit the preparation of statements and reports in accordance with HUD requirements, and to permit timely and effective audit.

(B) The HA must furnish HUD such financial and project reports, records, statements, and documents at such times, in such form, and accompanied by such reporting data as required by HUD.

(C) The United States Government, including HUD and the Comptroller General, and its duly authorized representatives, shall have full and free access to all HA offices and facilities, and to all books, documents, and records of the HA relevant to the administration of the projects under this ACC, including the right to audit and make copies.

Section 16 - Termination of a Project Under Management.

If any project under management under this ACC is terminated, all project reserves shall become part of another project administered by the HA in accordance with the terms of this ACC. If no other project(s) under management exists, the remaining project reserves shall be distributed as directed by HUD.

Section 17 - Notices, Defaults, Remedies.

(A) Any notice required or permitted to be given under this ACC shall be in writing, signed by a duly authorized official, and addressed, if to the HA, to the principal office of the HA, and if to HUD, to the HUD office with jurisdiction over the HA, unless otherwise directed by regulation or other requirement of HUD.

(B) Upon the occurrence of a substantial default by the HA, as determined by HUD in accordance with this ACC, HUD shall be entitled to any or all of the remedies set forth in paragraphs (E), (F), and (H) below. A substantial default is a serious and material violation of

any one or more of the covenants contained in this ACC. Events of substantial default shall include, but shall not be limited to, any of the following occurrences: (1) failure to maintain and operate the project(s) under this ACC in a decent, safe, and sanitary manner; (2) the disposition or encumbrance of any project or portion thereof without HUD approval; (3) failure of the HA to comply with any civil rights requirements applicable to the HA and the project(s); (4) abandonment of any project by the HA, or if the powers of the HA to operate the project(s) in accordance with the provisions of this ACC are curtailed or limited to an extent that will prevent the accomplishment of the objectives of this ACC; (5) failure to carry out modernization or development in a timely, efficient and effective manner; and (6) termination of tax exemption (either real or personal property) on behalf of a project covered under this ACC.

(C) Delivery of a notice of substantial default shall be required before the exercise of any remedy permitted under this ACC. Such notice shall: (1) identify the specific covenants, statutes, executive orders, or regulations alleged to have been violated; (2) identify the specific events, actions, failure to act, or conditions that constitute the alleged substantial default; and (3) provide a specific timeframe for the HA to cure the substantial default, taking into consideration the nature of the default.

(D) Except in cases involving clear and apparent fraud, serious criminal behavior, or emergency conditions that pose an imminent threat to life, health, or safety, the HA shall have the right to appeal any such notice received from the HUD office with jurisdiction over the HA. Such informal appeals shall be in writing and shall be submitted within ten (10) working days from the date of the HA's receipt of such notice. Appeals of the action of a HUD Office shall be made to the Assistant Secretary for Public and Indian Housing, or such other official as shall be a successor thereto.

(E) Upon the occurrence of a substantial default, or the expiration of any applicable cure period provided by HUD, the HA shall: (1) convey to HUD title to the project(s) as demanded by HUD if, in the determination of HUD (which determination shall be final and conclusive), such conveyance of title is necessary to achieve the purposes of the Act; or (2) deliver possession and control of the project(s) to HUD.

(F) Nothing contained in this ACC shall prohibit or limit HUD from the exercise of any other right or remedy existing under applicable law, or available at equity. HUD's exercise or non-exercise of any right or remedy under this ACC shall not be construed as a waiver of HUD's right to exercise that or any other right or remedy at any time.

(G) If HUD shall acquire title to, or possession of the project(s), HUD shall reconvey or redeliver possession of the project(s) to the HA, or to any successor recognized by HUD:

(1) upon a determination by HUD that the substantial default has been cured and that the project(s) will thereafter be operated in accordance with the terms of this ACC; or (2) after the termination of HUD's obligation to make annual contributions available, unless there

are any obligations or covenants of the HA to HUD that are then in default.

(H) HUD may at any time by notice to the HA declare this ACC terminated with respect to any project that at such time has not been permanently financed if: (1) the HA has made any fraudulent or willful misrepresentation of any material fact in any document or data submitted to HUD as a basis for this ACC or as an inducement to HUD to enter into this ACC; or (2) a substantial default exists in connection with any of the projects; provided, that no such termination shall affect any obligation of HUD to make annual contributions pursuant to section 12 of Attachment VI, Part B, of this ACC.

Section 18 - Rights and Obligations of HUD While in Possession of Project(s).

(A) During any period in which HUD holds title to or possession of the projects after a substantial default by the HA, HUD shall develop and/or operate such project(s) as nearly as practicable in accordance with the provisions of this ACC.

(B) During any such period, HUD may, in the name and on behalf of the HA, or in its own name and on its own behalf (as HUD shall solely determine), exercise any and all rights of the HA under this ACC, and perform any and all obligations of the HA under this ACC. Nothing herein shall be deemed to make the action(s) or omission(s) of the HA attributable to HUD.

Section 19 - Conflict of Interest.

(A)(1) In addition to any other applicable conflict of interest requirements, neither the HA nor any of its contractors or their subcontractors may enter into any contract, subcontract, or arrangement in connection with a project under this ACC in which any of the following classes of people has an interest, direct or indirect, during his or her tenure or for one year thereafter:

(i) Any present or former member or officer of the governing body of the HA, or any member of the officer's immediate family. There shall be excepted from this prohibition any present or former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the resident corporation, the HA or a business entity.

(ii) Any employee of the HA who formulates policy or who influences decisions with respect to the project(s), or any member of the employee's immediate family, or the employee's partner.

(iii) Any public official, member of the local governing body, or State or local legislator, or any member of such individuals' immediate family, who exercises functions or responsibilities with respect to the project(s) or the HA.

(2) Any member of these classes of persons must disclose the member's interest or prospective interest to the HA and HUD.

(3) The requirements of this subsection (A)(1) may be waived by HUD for good cause, if permitted under State and local law. No person for whom a waiver is requested may exercise responsibilities or functions with respect to the contract to which the waiver pertains.

(4) The provisions of this subsection (A) shall not apply to the General Depository Agreement entered into with an institution regulated by a Federal agency, or to utility service for which the rates are fixed or controlled by a State or local agency.

(5) Nothing in this section shall prohibit a tenant of the HA from serving on the governing body of the HA.

(B)(1) The HA may not hire an employee in connection with a project under this ACC if the prospective employee is an immediate family member of any person belonging to one of the following classes:

(i) Any present or former member or officer of the governing body of the HA. There shall be excepted from this prohibition any former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the HA.

(ii) Any employee of the HA who formulates policy or who influences decisions with respect to the project(s).

(iii) Any public official, member of the local governing body, or State or local legislator, who exercises functions or responsibilities with respect to the project(s) or the HA.

(2) The prohibition referred to in subsection (B)(1) shall remain in effect throughout the class member's tenure and for one year thereafter.

(3) The class member shall disclose to the HA and HUD the member's familial relationship to the prospective employee.

(4) The requirements of this subsection (B) may be waived by the HA Board of Commissioners for good cause, provided that such waiver is permitted by State and local law.

(C) The requirements of subsections (A) and (B) of this section do not apply to contracts entered into by an Indian Housing Authority, its contractors or subcontractors, although such contracts

remain subject to other applicable conflict of interest requirements.

(D) For purposes of this section, the term "immediate family member" means the spouse, mother, father, brother, sister, or child of a covered class member (whether related as a full blood relative, or as a "half" or "step" relative, e.g., a half-brother or stepchild).

Section 20 - Interest of a Member or Delegate to Congress.

No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this ACC or to any benefits which may arise from it. (As used in this section, the term "resident commissioner" refers to an individual appointed to oversee a territory or possession of the United States of America, e.g., Guam.)

Section 21 - Rights of Third Parties.

Except as to bondholders, as stated in Part B (Attachment VI) of this ACC, nothing in this ACC shall be construed as creating any right of any third party to enforce any provision of the ACC or to assert any claim against HUD or the HA.

Section 22 - Performance of Conditions Precedent to the Validity of this ACC.

The HA certifies that all conditions precedent to the valid execution and delivery of this ACC on its part have been complied with, that all things necessary to constitute this ACC its valid, binding, and legal agreement on the terms and conditions and for the purposes herein set forth have been done and have occurred and that the execution and delivery of the ACC on its part have been and are in all respects duly authorized in accordance with law. HUD similarly certifies with reference to its execution and delivery of this ACC.

Section 23 - Waiver or Amendment.

Any right or remedy that HUD may have under this ACC may be waived in writing by HUD without the execution of a new or supplemental agreement; or by mutual agreement of the parties to this ACC, this contract may be amended in writing: Provided, That none of the provisions of this ACC may be modified or amended so as to impair in any way HUD's obligation to pay any annual contributions that have been pledged as security for any obligations of the HA.

In witness whereof, the HA and HUD have caused this ACC to be executed and the HA has caused its seal to be hereunto affixed and attested all as of the date first above written.

(SEAL)

ATTEST:

(Housing Authority)

By

(Chairperson)

UNITED STATES OF AMERICA
Secretary of Housing and Urban
Development

By

(Official Title)

**Additional Terms and
Conditions**

**Constituting Part B of a
Consolidated Annual Contributions Contract
Between Housing Authority and
the United States of America**

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Applicability of Additional Requirements Pursuant to Part B of this ACC

The HA shall comply with all additional requirements set forth in any applicable attachments contained in this Part B to the ACC. The HA is responsible for determining whether the following attachment(s) apply to the HA's project(s), and for determining the extent to which they apply to a HA's projects. The HA shall not be relieved of its obligation to comply with these requirements because of its failure to make an appropriate determination of applicability.

- (A) **Attachment I:** Debt Forgiveness Requirements Applicable to Low Income Public and Indian Housing Projects. (Applicable to all projects, except those financed by the HA's issuance of tax-exempt bonds or by the sale of notes to the Federal Financing Bank.)
- (B) **Attachment II:** Special Requirements for Section 23 and Section 10(c) projects. (Applicable to all projects developed pursuant to sections 23 or 10(c) of the Act.)
- (C) **Attachment III:** Special Requirements for Turnkey III Homeownership Opportunities Projects. (Applicable to all projects operating pursuant to the Turnkey III Homeownership Opportunities program.)
- (D) **Attachment IV:** Special Requirements for Mutual Help Homeownership Projects. (Applicable to all projects operating pursuant to the Mutual Help Homeownership program.)
- (E) **Attachment V:** Special Interim Requirements for Development Projects. (Applicable, on an interim basis, to all projects being developed, or proposed to be developed, by a public housing authority under the Act.)
- (F) **Attachment VI:** Special Requirements Applicable to Projects Financed Through the Issuance of Tax-Exempt Bonds or Notes Sold to the Federal Financing Bank. (Applicable to all projects financed through the issuance of tax-exempt bonds or through notes sold to the Federal Financing Bank.)
- (G) **Attachment VII:** Insurance Requirements. (Applicable to all projects.)

ATTACHMENT I

Debt Forgiveness Requirements Applicable to Low Income Public and Indian Housing Projects

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Section 1 - Limitations on Forgiveness of Debt.

(A) Section 4(a) of the Act authorizes HUD to make loans to HAs to help finance the development or modernization of low income housing projects by such agencies. Section 5(a) of the Act authorizes HUD to make annual contributions to HAs, which may in no case exceed the annual debt service payable by such HAs to finance the development or modernization cost of the project involved.

(B) Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985 added section 4(c) to the Act to provide that each loan made by HUD under section 4(a) that has any principal amount outstanding or any interest amount outstanding or accrued that is repayable from debt service annual contributions shall be forgiven and any promise to repay principal and interest in a loan contract shall be cancelled. Section 4(c) further provides that such cancellation of a promise to repay principal and interest shall not affect any other terms and conditions of the ACC, which shall remain in effect as if the cancellation had not occurred.

(C) The forgiveness provided under section 4(c) is limited to loans held by HUD, repayment of which was to be made using annual contributions and does not extend to indebtedness of HAs to holders of bonds or notes sold to the Federal Financing Bank or otherwise, or under indebtedness to HUD not to be paid from annual contributions.

Section 2 - Maximum Amount That May Be Forgiven.

The outstanding principal balance and interest due on loans held by HUD made under section 4 of the Act for the development or modernization of such project, shall be forgiven, not to exceed a maximum principal amount equal to the Actual Development Cost (or Actual Modernization Cost) for such project, and interest thereon. Excess financing, with interest thereon until paid, shall not be forgiven.

ATTACHMENT II

Special Requirements for Section 23 and Section 10(c) Projects

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Section 1 - General Requirements Applicable to Section 23 and Section 10(c) Projects.

(A) Subject to reduction as herein provided, HUD shall pay Basic Annual Contributions to the HA with respect to each dwelling unit in a Section 23 or Section 10(c) project in the amount allocable to dwelling units of its size for each fiscal year in which the dwelling unit is under lease to the HA.

(B) Provided that the total estimated number of dwelling units of all sizes is not exceeded, the HA may lease any combination of the various sizes of dwelling units but shall not lease more than 125% of the estimated number of dwelling units of any specified size without the prior approval of HUD. Notwithstanding the number and size of dwelling units leased by the HA, HUD shall not be obligated to make Basic Annual Contributions with respect to the project for any period in excess of the amount of the Basic Annual Contributions established in this ACC.

(C) Following the end of each fiscal year, the HA shall promptly pay to HUD (unless HUD approves an alternative disposition), the amount of Basic Annual Contributions paid to the HA for such fiscal year with respect to any dwelling unit (1) which the HA did not place under lease; or (2) which may be attributable to: (i) a period prior to the effective date of the lease covering the dwelling unit, or (ii) subsequent to the date of termination of the lease covering any dwelling unit, or (iii) for which the HA is not obligated to pay rent under the lease covering any dwelling unit. Amounts in relation to item (2) above, shall be determined on the basis of 1/365th of the annual amount allocable to the dwelling unit for each day.

(D) The HA shall proceed expeditiously with the leasing of the maximum number of units authorized for use and occupancy by eligible families. If the HA does not proceed expeditiously with the leasing of dwelling units in the project, HUD may, by notice to the

HA, reduce its obligation to pay annual contributions with respect only to the number and sizes of dwelling units under lease to the HA at the date of the HA's receipt of such notice.

(E) The HA shall promptly commence and conduct a continuing survey and listing of available dwelling units that will provide decent, safe, and sanitary dwelling accommodations and related facilities and that are, or may be made, suitable for use as low-rent housing. The HA shall inspect each dwelling unit and shall maintain a current list of approved dwelling units for the project consistent with the need and demand of eligible families for such units.

(F) The initial term of any lease shall be for not less than twelve months nor more than one hundred and twenty (120) months. Each lease may contain a provision for renewal, provided that no such renewal shall result in a total term exceeding one hundred and eighty (180) months for an existing structure or two hundred and forty (240) months for a new structure.

(G) The HA shall not lease more than one dwelling unit in a structure containing ten or less dwelling units or more than 10% of the dwelling units (counting any fraction as one dwelling unit) in a larger structure except to the extent that the HA determines that such limit should not be applied.

(H) The books of account and records of the HA shall be maintained in such manner as will at all times show the operating receipts, operating expenditures, and reserves for the project separate and distinct from all other projects under this ACC. All annual contributions received by the HA in connection with the project shall constitute operating receipts of the project.

(I) The HA hereby pledges the Basic Annual Contributions payable with respect to a Section 23 or Section 10(c) project to the payment of its obligations incurred under this ACC in connection with such project(s).

(J) Upon the occurrence of a substantial default with respect to the project, the HA shall, if HUD so requires, assign to HUD all of its rights and interests in and to the project, or such part thereof as HUD may specify. HUD shall continue to pay the Basic Annual Contributions with respect to the dwelling units and for the terms of the leases so assigned to HUD, and to otherwise operate such units in accordance with the terms of this ACC until reassigned to the HA. After HUD is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of this ACC, HUD shall reassign to the HA all of HUD's rights and interests in and to the project, as such rights and interests exist at the time of such reassignment.

Section 2 - Special Requirements Applicable Only to Section 23 Projects.

(A) A HA with a Section 23 tax-exempt bond-financed project must also comply with the additional requirements set forth in Attachment VI to this ACC.

(B) In addition to project reserves remaining at the end of the lease term, funds returned to the HA by a bond trustee at the end of the bond term, or returned to a leased housing corporation created by an HA for the purpose of developing a Section 23 tax-exempt bond-financed project, shall be disbursed as directed by HUD.

(C) Section 23 private-owner financed projects are not subject to the requirements of section 6, Part A, of the ACC ("Cooperation Agreement(s)"), including the making of payments in lieu of taxes provided therein.

ATTACHMENT III

Special Requirements for Turnkey III Homeownership Opportunities Projects

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Section 1 - Homebuyers' Ownership Opportunity Agreement.

(A) The HA agrees to operate its Turnkey III project(s) in accordance with the regulations and guidelines for the Turnkey III Homeownership Opportunities Program for Low-Income Families, as prescribed by HUD. The HA shall enter into a Homebuyers' Ownership Opportunity Agreement (HOOA), in the form prescribed by HUD, with the occupant of each dwelling in the project. The HOOA shall provide for the ultimate ownership of the dwelling by the occupant who has performed all the obligations and conditions required by the HOOA.

(B) Failure of the HA to enter into such HOOA at the time and in the form prescribed by HUD, failure to perform any obligation imposed under such agreement, or failure to meet any other obligation under this ACC shall constitute a substantial default under the ACC.

Section 2 - Books of Account.

The books of account and records of the HA shall be maintained in accordance with the HOOA as well as other provisions of this ACC and in such manner as will at all times show the operating receipts, operating expenditures, reserves, and other required accounts for the project separate and distinct from all other projects under this ACC.

Section 3 - Application of Purchase Payments.

All funds held or received by the HA that are applied to payment of the purchase price of a home by a Homebuyer shall be used or disposed of by the HA as authorized by HUD in applicable statutes, executive orders, regulations, or contractual documents governing the use of proceeds of sale.

ATTACHMENT IV

Special Requirements for Mutual Help Homeownership Projects

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Section 1 - Annual Contributions Contract.

The IHA agrees to develop and operate its Mutual Help project(s) in compliance with any applicable HUD regulations and guidelines for the Mutual Help (MH) Homeownership Opportunity Program, and in accordance with all contractual obligations imposed upon the IHA by the Mutual Help and Occupancy Agreement (MHO Agreement).

Section 2 - MHO Agreement.

(A) The MH Program provides low income families with an opportunity to become homeowners in return for the families' agreement to make a minimum contribution toward the development cost of a project, to maintain the home, and to perform all duties of a homebuyer under a MHO Agreement.

(B) As units become available, the IHA shall execute a MHO Agreement, in the form prescribed by HUD, with each eligible family. The IHA shall ensure the homebuyer's compliance with all applicable provisions of the MHO Agreement, and shall be responsible for ensuring that the Mutual Help unit is maintained in a decent, safe and sanitary condition, notwithstanding the homebuyer's failure to meet his or her obligation for maintenance under the MHO Agreement.

(C) The IHA shall ensure that each home in a MH project is used, unless otherwise approved by HUD, solely in accordance with a MHO Agreement executed with an eligible homebuyer.

(D) The IHA's failure to enter into a MHO Agreement with an eligible family for an available home in a Mutual Help project at the times required by HUD, constitutes a substantial default under this ACC.

Section 3 - Books of Account.

The IHA shall maintain books of account and records in accordance with the requirements of the MHO Agreement and any HUD requirements. The books of account and records shall be maintained in such manner as will at all times show the operating receipts, operating expenses, reserves, and other required accounts for the project separate and distinct from all other projects under this ACC.

Section 4 - Application of Purchase Payments.

All funds held or received by the IHA from a homebuyer for the purchase of a MH unit shall be used or disposed of by the IHA as authorized by HUD in applicable statutes, executive orders, regulations, or contractual documents governing the use of proceeds of sale.

ATTACHMENT V

Special Interim Requirements for Development Projects

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In addition to the requirements codified at 24 CFR part 941, this attachment lists interim requirements applicable to projects being developed, or proposed to be developed, by a public housing agency. The provisions of this attachment shall expire upon HUD's issuance, for effect, of an interim or final regulation to replace the rule promulgated at 45 FR 60838 (September 12, 1980; 24 CFR part 941, and all subsequent amendments to that rule). This attachment does not apply to Indian housing development, which is governed by regulations codified at Title 24 of the Code of Federal Regulations.

Section 1 - Acquisition of Project Sites.

(A) The HA, unless HUD otherwise approves, shall provide by contract for necessary services of experts in their respective fields for land surveys, title information, and legal services for land

acquisition, appraisals and option negotiations, in accordance with HUD requirements. Approval of such contracts by HUD shall be required if the fees provided therein exceed the maximum amounts then prescribed by HUD. Such contracts shall not be entered into with respect to any project site prior to tentative approval by HUD of such site. The HA shall not undertake to acquire real property unless HUD has approved the acquisition thereof for a project.

(B) The HA, unless HUD otherwise approves, shall obtain a formal appraisal(s), as required by HUD, on each parcel and obtain HUD approval before taking an option, instituting condemnation proceedings, or acquiring title thereto, and shall conduct all negotiations for the acquisition of real property in accordance with regulations and requirements prescribed by the United States Government. In no case shall persons who have made such appraisals be employed to negotiate options.

(C) The HA shall not accept any option for, institute, accept awards under (except as required by applicable law), or appeal any condemnation proceedings for, or otherwise acquire any portion of the site for any project until it has submitted such data with respect thereto as HUD may require, and has obtained the approval of HUD of such action. The HA shall appeal any condemnation award if requested to do so by HUD.

(D) The HA shall acquire good and valid title to the site of each project free and clear of any mortgage, lease, lien, or encumbrance of any nature whatsoever, other than such leases, use restrictions, zoning ordinances, building restrictions, easements, or rights-of-way as will not, in the determination of the HA approved by HUD, adversely affect the value or usefulness of such site for the project.

(E) Upon the vesting of title to the site of each project in the HA and the due recording of deeds or other documents required to be recorded in order to protect such title, the HA shall furnish to HUD a final report on completed land acquisition, together with two copies of: (1) title insurance policies; or (2) title certificates; or (3) attorneys' opinions, showing that the HA has good and valid title, as described in subsection (D) hereof, to the entire site of such project, and that such deeds or other documents have been duly recorded or filed for record wherever necessary to protect such title.

Section 2 - Architectural and Engineering Services.

The HA shall furnish HUD, at such time(s) as HUD may require, and in any event prior to the release of any document for the taking of bids, evidence satisfactory to HUD, showing that the plans, drawings, specifications, and related documents are in accordance with the provisions of this ACC and with all applicable laws, ordinances, and regulations, except to the extent that valid waivers have been obtained from the appropriate authorities. The HA shall obtain all necessary permits or approvals of State and local housing, planning, zoning, building, and other boards, bodies, or officers having jurisdiction, and shall furnish to HUD a certificate listing such

approvals before any Main Construction Contract is let.

Section 3 - Main Construction Contract and Other Contracts.

(A) "Main Construction Work" for any project shall mean all physical construction work, materials, and equipment in connection with such project except demolition, lawns and planting, and the furnishing of movable equipment. "Main Construction Contract" shall mean any contract covering all or any part of the Main Construction Work. "Construction or Equipment Contract" shall mean any contract covering all or any part of the Main Construction Work, or covering demolition, lawn and planting, or the furnishing of movable equipment.

(B) Unless otherwise required by applicable State laws, the Main Construction Work for each project shall be performed under one contract, except that HUD, upon submission of evidence satisfactory to it that such action is in the best interest of the development of the project, may approve: (1) separate contracts for foundations or for any or all elements of site improvements, to be entered into prior to the execution of contracts for the remainder of the Main Construction Work; (2) separate contracts for any or all of the mechanical trades, to be entered into at the same time as the contracts for the remainder of the Main Construction Work; or (3) separate contracts for specific buildings or groups of buildings to be developed concurrently or consecutively.

(C) Demolition, lawns and planting, and the furnishing of movable equipment may be performed under separate contracts or may be included in the same contract(s) as the Main Construction Work.

(D) All Main Construction Work and demolition, lawns and planting, and the furnishing of movable equipment shall be performed under lump-sum contracts, and no part of such work shall, unless approved in advance by HUD, be performed by force account.

Section 4 - Taking of Bids.

(A) The HA shall not request alternate bids (e.g., two different structural systems). Instead, the HA may specify the most expensive system as the base bid and list deductive alternates in inverse priority order so that in the case of a budget overrun, they may be taken in numerical order as listed until the award can be made within available funds.

(B) Each bidder for any of the Construction or Equipment Contracts (except demolition contracts) shall, unless HUD otherwise approves, be required to furnish a bid bond or equivalent guarantee in accordance with requirements set forth in Title 24 of the Code of Federal Regulations. Bidders for demolition contracts shall, unless HUD otherwise approves, be required to furnish a bid bond or equivalent guarantee in an amount not less than ten percent of the cost of labor, materials, hauling, and all other incidental expenses, as estimated by the HA, necessary

to perform the work under the demolition contract, without regard to the value of salvage.

Section 5 - Liquidated Damages.

Each Construction or Equipment Contract shall include provisions, in form and substance satisfactory to HUD, for liquidated damages in the event of delay in the performance of such Construction or Equipment Contract, unless HUD approves the omission of such provisions.

Section 6 - Subcontracts and Assignments.

(A) The HA shall ensure that no subcontractor proposed to carry out work under this ACC is subject to debarment, suspension, or is otherwise ineligible to participate in a Federal assistance program, pursuant to Title 24 of the Code of Federal Regulations.

(B) Each Construction or Equipment Contract shall provide that: (1) the contractor shall make no assignment thereof (other than an assignment of the monies due or to become due thereunder to a bank or financial institution) without the prior approval of the HA, which approval may be given only with respect to a responsible assignee who shall furnish performance and payment bonds in accordance with Title 24 of the Code of Federal Regulations; and (2) such Construction or Equipment Contract may be assigned by the HA to any corporation, agency, or instrumentality authorized to accept such assignment.

Section 7 - Prevailing Salaries or Wages During Development.

(A) Each contract entered into by the HA in connection with the development of any project under which any architects, technical engineers, or technicians are employed shall provide that the HA will not make any payment under such contract unless and until the HA has received a signed statement from the contractor that such contractor and each of his or her subcontractors has made payment to each class of employees in compliance with the applicable prevailing wages, as set forth in Title 24 of the Code of Federal Regulations. The HA shall not make any such payment unless and until it has received such signed statement.

(B) Each contract referred to in subsection (A) entered into by the HA shall require that if the contractor or any of his or her subcontractors finds it necessary or desirable to exceed the prevailing salary or wage rates specified in his or her contract, any expense incurred by the contractor or subcontractors because of the payment of salaries or wages in excess of such amounts shall not be cause for any increase in the amount payable under the contract. The HA shall not consider or allow any claim for additional compensation made by the contractor or subcontractors because of such payments.

Section 8 - Copeland Act; Contract Work Hours Standards Act.

(A) The HA shall incorporate in each contract entered into by it in connection with the construction, prosecution, completion or repair of the projects the following:

"Compliance with Copeland Regulations. The contractor shall comply with the Copeland Regulations (29 CFR Part 3, or any successor provision) of the Secretary of Labor which are herein incorporated by reference."

(B) The HA shall incorporate in each contract entered into by it that may require the employment of laborers or mechanics the following:

"Contract Work Hours Standards Act - Overtime Compensation.

As used in these paragraphs, the terms "laborers" and "mechanics" include watchmen and guards.

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

(2) **Violations; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subsection (B)(1), the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his or her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the clause set forth in subsection (B)(1), in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard forty hours without payment of the overtime wages required by the clause set forth in subsection (B)(1).

(3) **Withholding for liquidated damages.** The HA may withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for

liquidated damages as provided in the clause set forth in subsection (B)(2).

(4) **Subcontracts.** The contractor shall insert in any subcontracts the clauses set forth in subsections (B)(1), (2), and (3) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts that they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

Section 9 - Wage Claims and Adjustments.

Each contract entered into by the HA shall provide that in cases of underpayment of salaries or wages to any architects, technical engineers, draftsmen, technicians, laborers, or mechanics by the contractor or any of his subcontractors, the HA may withhold from such contractor out of payments due, an amount sufficient to pay persons employed on the work covered by the contract the difference between the salaries or wages required to be paid under the contract and the salaries or wages actually paid such employees for the total number of hours worked, and shall further provide that the amounts withheld may be disbursed by the HA for and on account of the contractor or the subcontractor to the respective employees to whom they are due. The HA shall in cases of such underpayment withhold such monies and any amounts of liquidated damages due the United States in connection with violations of overtime compensation requirements of the Contract Work Hours Standards Act: provided, That the HA shall not be considered in default under this sentence if it has in good faith made payments to the contractor in reliance upon a signed statement of the contractor that the salaries and wages required under this contract have actually been paid.

Section 10 - Payrolls and Related Reports.

(A) Each contract identified in subsection (A) of section 7 of this Attachment V shall also require that payrolls and basic records relating thereto will be maintained during the course of the work and preserved by the contractor and his or her subcontractors for a period of three years thereafter for all laborers and mechanics employed in the development of the project. Such records shall contain the name and address of each such employee, his or her correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b)(2) of the Davis-Bacon Act, or any successor provision), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under the Contract Work Hours and Safety Standards Act 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 (or any successor provision), the contractor shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records that show the costs anticipated or the actual cost incurred in

providing such benefits.

(B) The contractor shall be required to submit weekly to the HA such copies and summaries (on forms prescribed by HUD and furnished by the HA) of all of his or her payrolls and those of each of his or her subcontractors, as the HA or HUD may require. Each such payroll and summary shall be accompanied by a statement signed by the employer or his or her agent indicating that: (1) such payroll is correct and complete; (2) the wage rates contained therein are not less than those determined by the Secretary of Labor; and (3) the classifications set forth for each laborer or mechanic conform with the work performed. The contractor shall be required to make his or her employment records available for inspection by authorized representatives of the HA, HUD, and the Department of Labor and to permit such representatives to interview employees during working hours on the job.

Section 11 - Other Labor Provisions.

(A) All disputes concerning the payment of prevailing wage rates or classifications arising under this ACC or under any contract entered into by the HA involving: (1) significant sums of money; (2) large groups of employees; or (3) novel or unusual situations, shall be promptly reported to HUD for decision or, at the option of HUD, referral to the Secretary of Labor. The decision of HUD or the Secretary of Labor, as the case may be, shall be final. Each contract entered into by the HA shall embody the provisions of this paragraph.

(B) All questions arising under this ACC or under any contract relating to the application or interpretation of the Copeland Act or the Contract Work Hours Standards Act shall be referred to the Secretary of Labor for ruling or interpretation, and such ruling or interpretation shall be final. Each contract entered into by the HA shall embody the provisions of this subsection.

Section 12 - Retention of Contract Rights and Change Orders.

(A) With respect to all contracts entered into by the HA in connection with the development of any project, the HA: (1) except in an emergency endangering life or property, shall not, without HUD approval, amend, modify, or consent to any change in any such contract or contractual provision that is required by this ACC to be approved by HUD; (2) shall at all times retain, preserve, and enforce all its rights under all such contracts; and (3) shall not, without the prior approval of HUD, waive, release, or compromise any right or claim that it may have under any such contract.

(B) Each Construction or Equipment Contract shall contain the following provision:

"Except in any emergency endangering life or property, no change shall be made by the contractor unless he or she has received a prior written order from HUD approved on its face by HUD authorizing the change, and no claim for an adjustment of the contract price

or time shall be valid unless so ordered."

Section 13 - Payment to Contractors.

(A) Each Construction or Equipment contract may provide for partial payments by the HA to the contractor. In such event, the Construction or Equipment Contract shall provide that the contractor shall supply to the HA, in a form satisfactory to HUD, a detailed estimate showing a complete breakdown of the contract price. Partial payment shall be made in accordance with periodic estimates based upon said detailed breakdown and with appropriate supporting data. The periodic estimates shall cover work performed (including materials delivered to and properly stored on the site with the approval of the HA) during the preceding period, and shall be duly certified and approved by persons designated by the HA. In making periodic partial payments, the HA shall retain at least 10 percent of the amount of each periodic estimate until final completion and acceptance of all work covered by the particular contract: Provided, That after one-half of the work has been completed, and if the work is progressing satisfactorily and continues to so progress, the HA may make the remaining partial payments in full for the work subsequently completed.

(B) Each Construction or Equipment Contract shall provide that final payment to the contractor by the HA of amounts retained under subsection (A) shall not be made until: (1) the contractor has furnished a release, in a form approved by HUD, of all claims against the HA arising under and by virtue of such Construction or Equipment Contract, or other than such claims, if any (the basis, scope, and amount of each of which are clearly defined and stated) as may be specifically excepted by the contractor from the operation of such release; and (2) the contractor has furnished evidence satisfactory to the HA that the contractor has paid, and that his or her subcontractors have paid, all sums due to laborers, mechanics, and materialmen.

Section 14 - Acceptance of Contract Work and Completion of Contracts.

(A) Each Construction or Equipment Contract shall require that the work covered thereby shall be completed within the time specified therein and such extensions as may be granted by the HA. The HA shall grant no such extension without approval thereof by HUD.

(B) With respect to each Construction or Equipment Contract, the HA may accept the work thereunder in parts or in its entirety. Such acceptance may be acceptance of the work involved either as: (1) fully complete and satisfactory; or (2) completed but with an adjustment in price for noncompliances; or (3) completed subject to the correction of specific minor items. No work shall be so accepted by the HA unless such acceptance is approved by HUD, or HUD has waived such approval: provided, That the HA may accept work required in the correction of specific minor items without the approval of HUD.

(C) After acceptance of all work (including the correction of any specific minor items) under

each Construction or Equipment Contract, the HA shall submit for approval by HUD a certificate of: (1) full completion; or (2) full completion but with an adjustment in price for noncompliances, and shall include in such certificate a statement of the final amount due and payable to the contractor.

Section 15 - Development Cost.

(A) "Date of Full Availability" with respect to each project shall mean the last day of the month in which substantially all dwelling units in such project became available for occupancy.

(B) "Initial Operating Deficit" of any project as of the end of the Initial Operating Period thereof shall mean the amount, if any, by which the Operating Expenditures thereof to such date exceeded the Operating Receipts.

Section 16 - Development Cost Budgets.

(A) Until such time as a budget of Development Cost (herein called "Development Cost Budget") is approved by HUD for any project, the breakdown of the Maximum Development Cost set forth in the applicable Development Program shall constitute the approved Development Cost Budget for such project.

(B) At the time the HA requests HUD approval of the award of contracts for the Main Construction Work of any project, it shall submit for HUD approval a Development Cost Budget for such project that shall be based upon: (1) the amount of the proposed award(s); (2) costs and obligations incurred to such date; (3) the estimated amount of costs and obligations not yet incurred; and (4) an allowance for contingencies in such amount as HUD may approve.

(C) In the event that in the judgment of the HA it appears necessary with respect to any project to incur Development Cost in excess of the total amount shown in the last previously approved Development Cost Budget for such project, or that it appears necessary with respect to any of the main classifications of Development Cost to incur costs in excess of the amount shown therefor in the last previously approved Development Cost Budget for such project plus the share of the allowance for contingencies allocated to such main classifications, or if for any other reason the HA deems it advisable, it may prepare and submit to HUD for its approval a revised Development Cost Budget for such project.

(D) Not earlier than six months nor later than twenty-four months after the Date of Full Availability of each project, the HA shall submit for HUD approval a final Development Cost Budget for such project which shall be based upon: (1) costs and obligations incurred to such date including a reasonable allowance for disputed, contingent, or unliquidated liabilities, and for legal and other costs and expenses in connection with the settlement of such liabilities; and (2) the estimated amount of costs and obligations not yet incurred for work, equipment, and

services deemed necessary for the completion of such project. No other allowance for contingencies shall be included in such final Development Cost Budget.

(E) HUD shall promptly review each proposed Development Cost Budget and notify the HA of its approval or disapproval thereof. If HUD disapproves any proposed Development Cost Budget, the HA shall be so notified in writing and be furnished with a detailed explanation of the reasons for such disapproval. Upon approval by HUD of any Development Cost Budget for any project, such budget shall supersede all previously approved budgets for such project, and the total of such budget shall thereafter and for all purposes of this ACC be the Maximum Development Cost of such project, and shall for all purposes of this ACC correspondingly revise the aggregate Maximum Development Cost of all the projects.

(F) The HA shall not with respect to any project incur costs in excess of the amounts shown in the last previously approved Development Cost budget for such controlled accounts as may be specified by HUD.

Section 17 - Actual Development Cost.

(A) The HA shall, as promptly as possible consistent with the maintenance of its rights against its contractors, settle and pay all disputed, contingent, or unliquidated items of Development Cost on all projects.

(B) Whenever the HA shall be satisfied that all the development work on each project has been properly completed, and that the entire Development Cost on such project (including all items that may have theretofore been disputed, contingent, or unliquidated) has been fully paid, the HA shall submit to HUD for its approval a certificate setting forth the total amount of the Development Cost of such project (herein called the "Actual Development Cost"), stating that: (1) all such development work has been completed; (2) the entire Development Cost or liabilities therefor incurred by the HA have been fully paid; (3) there are no undischarged mechanics', laborers', contractors', or material-men's liens on such project on file in any public office where the same should be filed in order to be valid liens against such project; and (4) the time in which such liens could be filed has expired. Upon approval by HUD, such certificate shall be known as the "Actual Development Cost Certificate." The determination of the amount of the Actual Development Cost contained in such Actual Development Cost Certificate so approved by HUD shall be final and conclusive for all purposes of this ACC, and upon the determination of Actual Development Cost, a copy of the approved Actual Development Cost Certificate shall be attached to this ACC and shall be deemed to further amend the ACC to state the Actual Development Cost.

(C) If the HA shall unduly delay in the submission of the Actual Development Cost Certificate for any project, HUD may give notice to the HA that the amount of the Development Cost of such project incurred to the date of such notice shall be considered to be the Actual Development

Cost of such project, and such notice shall constitute the Actual Development Cost Certificate for such project for all the purposes of this ACC, and shall be deemed to amend the ACC to state the Actual Development Cost.

(D) Promptly after the issuance of the Actual Development Cost Certificate for any project the HA shall: (1) if such project is then permanently financed, deposit any remaining balance of the monies theretofore received for the purpose of the development of such project in the Advance Amortization Fund; or (2) if such project is not then permanently financed, apply any such remaining balance to the payment of outstanding Advance Notes or Temporary Notes issued in connection with such project.

(E) Subsequent to the issuance of the Actual Development Cost Certificate for any project, no cost for additional development work shall be incurred by the HA without the approval of HUD. In the event that the HA and HUD agree that additional development work is necessary, the Actual Development Cost Certificate shall be amended to include the cost of such additional development work.

ATTACHMENT VI

Special Requirements Applicable to Projects Financed Through the Issuance of Tax-Exempt Bonds or Notes Sold to the Federal Financing Bank

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This attachment lists special requirements applicable to projects financed by tax-exempt bonds or notes sold to the Federal Financing Bank. These requirements shall expire when all such bonds and notes associated with a particular project are paid off.

Section 1 - Reconstruction and Restoration.

(A) If a project, or any portion of a project, is damaged or destroyed, the HA shall establish promptly (by settlement approved by the HA and HUD, or by litigation) and collect all valid claims which may have arisen against insurers or others based upon any such damage or destruction. In addition, the HA shall reconstruct, restore or repair the project, except as otherwise provided in this section.

(B) The HA shall deposit into the General Fund the proceeds of any claims and any other monies provided for the reconstruction, restoration, or repair of a project and shall reserve such funds for these purpose(s). Unless otherwise approved by HUD, the HA shall use these funds to pay for the cost of reconstructing, restoring, or repairing the project. Any funds that remain after completing the work and paying off all costs associated with the work are to be applied as follows: (1) to pay off any indebtedness that the HA may have incurred to provide such funds; (2) to reimburse any other reserve or other account that may have been used to provide the funds; and (3) as unreserved Operating Receipts.

(C) If the reconstruction, restoration, or repair of the project can be accomplished substantially as one operation, is not to be performed by the HA's regular staff, and the estimated cost is in excess of \$10,000, the HA shall ensure that the work is done in compliance with the requirements of section 5, Part A, of the ACC.

(D) Upon approval by HUD, the HA may determine that all or part of the damage to or destruction of a project shall not be reconstructed, restored, or repaired. In such event, the HA shall deposit into the Advance Amortization Fund the proceeds of any claims against insurers or others as a result of the damage or destruction, to the extent these proceeds are not used to reconstruct, restore, or repair the project.

Section 2 - Advances by HUD; Mortgage.

(A) Each advance provided by HUD to a HA for the development of a project shall be evidenced by an obligation duly issued and delivered by the HA, in a form satisfactory to HUD, which obligation shall bear interest at the applicable Loan Interest Rate from the date the advance is made, and shall otherwise conform to the following:

(1) Each obligation (herein called a "Project Loan Note") evidencing an advance made for the Development Cost of any project not permanently financed, together with interest on such note, shall be due and payable on demand.

(2) Each obligation (herein called a "Permanent Note"), evidencing an advance made for the development cost of any permanently financed project, together with interest on the Note, shall (subject to the HA's right to prepay some or all of this amount) be payable on the first day of the month following each Annual Contribution Date. Such amount is payable in annual installments (applicable first to interest and then to principal) equal to the portion of the Debt Service Annual Contribution allocable to the Note, in accordance with section 5(C) of this Attachment. Each Permanent Note issued to refund or renew other Permanent Notes, in whole or in part, shall be payable in installments equal to the installments payable upon the Notes so refunded or renewed. Each Permanent Note shall further provide that the holder of the Note may declare the Note to be due and payable in full at any time: (1) when there is any default in the payment of any installment of principal or interest; or (2) when the HA is in substantial

default; or (3) upon the termination of this ACC.

(B) HUD shall not demand payment of, nor pledge, sell, or otherwise dispose of any Project Loan Note unless: (1) the HA is in substantial default; or (2) HUD has given notice of the termination of this ACC in accordance with section 17(H), Part A, of this ACC.

(C) Each Project Loan Note or Permanent Note issued in connection with a project shall be secured, to the extent authorized or permitted by law, by a mortgage, deed of trust, or other equivalent lien upon the project.

Section 3 - Bond Resolutions and Fiscal Agent.

(A) Before the delivery of the first issue of bonds, the HA shall enter into, and thereafter maintain, a fiscal agency agreement, in substantially the form prescribed by HUD. Immediately upon executing the agreement, the HA shall furnish HUD with executed or conformed copies of the agreement as may be required by HUD.

(B) The Fiscal Agent named in the Bond Resolutions in connection with the first issue of Bonds shall also be named as Fiscal Agent in all subsequent Bond Resolutions, and shall administer the Debt Service Fund and the Advance Amortization Fund. The HA shall require the Fiscal Agent to furnish HUD with such reports and other data relating to accounts under this ACC as may reasonably be required by HUD.

Section 4 - Delivery of Bonds.

(A) Delivery of (including payment for) each issue of Bonds shall be made at the time and place established in the terms of the offering.

(B) At such time all amounts paid by purchasers of the bonds on account of accrued interest shall be paid to the Fiscal Agent for deposit in the Debt Service Fund, and all amounts paid on account of premiums shall be paid to the Fiscal Agent for deposit in the Advance Amortization Fund or, with the approval of HUD, be used for the repurchase of bonds.

(C) At such time, and as a condition precedent to the delivery of such bonds, the HA shall deposit or cause to be deposited with the Fiscal Agent in the Debt Service Fund from the bond proceeds (or from any other monies of the HA, including monies available for such purpose under section 5(C)(6) of this Attachment) an amount equal to: (1) the interest on the issue of bonds becoming due and payable six months after the Bond Date of such issue, less (2) any portion thereof deposited in the Debt Service Fund on account of accrued interest, and less (3) any amount which may then be on deposit in the Debt Service Fund for such purpose.

(D) At such time, and as a condition precedent to the delivery of such bonds, the HA shall advance or cause to be advanced from the bond proceeds (or from any other monies of the HA) to the Fiscal Agent for deposit in the Debt Service Fund an amount equal to: (1) the interest on such issue of Bonds becoming due and payable twelve months after the Bond Date of such issue, less (2) any portion thereof deposited in the Debt Service Fund on account of accrued interest. At a later date, the HA shall be reimbursed by the Fiscal Agent for such advance in accordance with section 6(E) of this Attachment.

(E) At such time the HA shall pay or cause to be paid from the bond proceeds (or from other monies of the HA) the principal of and interest on all outstanding Project Loan Notes, Permanent Notes, and Project Notes to the extent that the principal of such Notes includes an amount for any part of the Development Cost financed by such issue of Bonds.

(F) Upon delivery of the first issue of Bonds to finance any part of the Development Cost of a Project, such Project shall be considered to be "Permanently Financed."

(G) If, at the time of the delivery of an issue of Bonds, the HA does not have available the amount set forth in subsection (D) of this section to advance to the Fiscal Agent for deposit in the Debt Service Fund, HUD shall advance on account of the loan herein provided an amount equal to such deficiency. Such advance shall be made and deposited in the manner described in subsection (D) of this section, but shall not be included in the amount of the Minimum Development Cost of any project. The Fiscal Agent shall, on behalf of the HA, reimburse HUD for such advance at the time and in the manner provided for reimbursement of similar advances to the HA, in accordance with section 6(E) of this Attachment. Such advance shall bear interest at the Loan Interest Rate and the interest shall be paid from Operating Receipts as an Operating Expenditure.

Section 5 - Annual Contributions.

(A) HUD shall make annual contributions to the HA for each project. Such annual contributions shall include Debt Service Annual Contributions (or Basic Annual Contributions in respect to Leased Housing projects) and Additional Annual Contributions pursuant to section 11, Part A, of the ACC. HUD (1) shall make Debt Service Annual Contributions to the HA for each permanently financed project; and (2) may, in its determination, make Debt Service Annual Contributions to the HA for each project that is not permanently financed. The date upon which each Debt Service Annual Contribution is payable (except the first Debt Service Annual Contribution with respect to a project not permanently financed, which may be made available as of the Date of Full Availability of such project) shall be known as the "Annual Contribution Date." If the Annual Contribution Date is not specifically set forth in this ACC, it shall be deemed to be the fifteenth day of the fourth, fifth or sixth month of the fiscal year, as determined by HUD.

(B) The first Debt Service Annual Contribution with respect to each permanently financed project shall be due and payable on the Annual Contribution Date which is seventeen months and fourteen days after the Bond Date of the first issue of bonds issued to finance any part of the development cost of the project. For projects that are not permanently financed, the first Debt Service Annual Contribution may be made available as of the Date of Full Availability of the project and shall be determined in accordance with subsection (C)(1)(d) of this section 5. If the first Debt Service Annual Contribution for a project is made available as of the Date of Full Availability of the project, the second Debt Service Annual Contribution with respect to the project may be made on the Annual Contribution Date that occurs not less than twelve months subsequent to the Date of Full Availability. Subsequent annual contributions shall be due and payable on each Annual Contribution Date thereafter.

C) On each Annual Contribution Date, HUD shall pay (subject to reduction as provided in this section 5) Debt Service Annual Contributions for each project for which any Debt Service Annual Contributions are then payable.

(1) The amount of the Debt Service Annual Contribution shall be equal to the sum of the level debt services of all unmatured issues of bonds, bearing a Bond Date not later than seventeen months and fourteen days prior to such Annual Contribution Date, as specified in the applicable Bond Resolution, plus an amount or amounts allocable to Permanent (or Project Loan Notes, as follows:

(a) For each project that is permanently financed by an issue of bonds equal to the minimum development cost first established for the project, an amount, as determined by HUD, which if applied annually at the interest rate (adjusted to the nearest one-eighth of one percent) charged the HA during the next preceding fiscal year in respect to the unamortized portion of the minimum development cost of the project which exceeded as of the last day of such fiscal year the principal amount of such issue of bonds would fully amortize such portion not later than the first day of the month following the last Annual Contribution Date for such project; and

(b) For each project that is permanently financed by an issue of bonds in an amount less than the amount of the minimum development cost first established for the project, an amount equal to (i) the applicable minimum loan interest rate times the amount by which the minimum development cost as first established for the project exceeds the principal amount of such issue of bonds, plus (ii) an amount, as determined by HUD, which if applied annually at the interest rate (adjusted to the nearest one-eighth of one percent) charged the HA during the next preceding fiscal year in respect to the portion of the minimum development cost of the project which exceeds, as of the last day of the fiscal year, the minimum development cost as first established for the project would fully amortize such portion not later than the first day of the month following the last Annual Contribution Date for the project; and (iii) commencing on the Annual Contribution Date next following

the last maturity date of such issue of bonds, the amount of the level debt service of such issue of bonds; and

(c) For each project that is financed by a permanent note in lieu of bonds, an amount, as determined by HUD, which, if applied annually at the interest rate (adjusted to the nearest one-eighth of one percent) charged the HA during the next preceding fiscal year in respect to the unamortized portion of the minimum development cost of the project that exceeded (as of the last day of such fiscal year) the minimum development cost as first established for the project would fully amortize such portion not later than the first day of the month following the last Annual Contribution Date for the project; and

(d) For each project that is not permanently financed, an amount, as determined by HUD, which if applied annually at the interest rate (adjusted to the nearest one-eighth of one percent) charged the HA during the next preceding fiscal year in respect to the unamortized portion of that figure determined by HUD to be that below which the development cost of the project shall in no event fall would fully amortize such portion not later than the first day of the month following the last Annual Contribution Date for the project.

Upon delivery of any issue of bonds to refund Permanent or Project Loan Notes, the amount of the level debt service of such issue of bonds shall be in lieu of the portion of the Debt Service Annual Contribution allocable to such Notes whether pursuant to clause (a), (b), (c), or (d) above.

(2) On each Annual Contribution Date, the actual amount of the Debt Service Annual Contribution to be paid (herein called the "Accruing Annual Contribution") shall be an amount equal to the Debt Service Annual Contribution less (1) the amount then on deposit in the Debt Service Fund for the reduction of annual contributions pursuant to subsection (B) of section 6 of this Attachment, and (2) any amount then on deposit in the Debt Service Fund, pursuant to subsection (B) of section 4 of this Attachment, on account of interest accrued on any issue of Bonds after a date that is six months after the Bond Date of such issue.

(3) Notwithstanding any other provision of this ACC, HUD may make payment of any Accruing Annual Contribution in semi-annual installments as follows: (a) the first installment shall be paid on the Annual Contribution Date in the amount, if any, by which (i) the Accruing Annual Contribution exceeds (ii) the amount of principal and interest that shall become due and payable on the next following anniversary of the Bond Date on all bonds outstanding at the end of the preceding fiscal year and that bears a Bond Date not later than seventeen months and fourteen days prior to such Annual Contribution Date; (b) the balance of such Accruing Annual Contribution shall be paid on the date six months after such Annual Contribution Date.

(4) At least thirty days prior to each Annual Contribution Date, the Fiscal Agent shall file with HUD a report showing the amount of each deposit made into the Debt Service Fund since the

next preceding Annual Contribution Date and the balance in the Debt Service Fund as of the date of such report.

(5) Except as otherwise provided in subsections (C)(6) and (7) of this section 5, HUD shall pay each Accruing Annual Contribution, or installment thereof, to the Fiscal Agent for deposit in the Debt Service Fund. At the time of such payment, HUD shall furnish to the HA and to the Fiscal Agent a statement showing (in detail and with appropriate explanations) the amount of the Accruing Annual Contribution, and the method by which the Accruing Annual Contribution shall be paid. Each such statement shall include a schedule showing, on the basis of information available to HUD, the distribution of the funds in the Debt Service Fund to be made pursuant to section 6 of this Attachment.

(6) On each Annual Contribution Date on which any Permanent, Project Loan, or Project Notes issued in connection with any project with respect to which an annual contribution is then payable remain outstanding and until full repayment, with interest at the applicable Loan Interest Rate, of all expenditures, if any, made by HUD in connection with any such Project pursuant to section 13 of this Attachment, such portion of the Accruing Annual Contribution, which if deposited in the Debt Service Fund would (together with the monies then on deposit in said Fund for the reduction of annual contributions pursuant to this ACC plus the amount of the second installment, if any, of such Accruing Annual Contribution) exceed the sum of: (a) an amount equal to the principal and interest becoming due and payable during the twelve month period following such Annual Contribution Date on each issue of bonds bearing a Bond Date not later than seventeen months and fourteen days prior to such Annual Contribution Date, plus (b) an amount equal to the aggregate Bond Service Carry-Over required to be on deposit in the Debt Service Fund on the next succeeding Annual Contribution Date, may be withheld by HUD, and applied to the full extent thereof. Such amount shall be applied, first, to reimburse the HA for any advance made pursuant to section 4(D) of this Attachment. Thereafter, such amounts shall be used pay the interest and principal of such Notes and to repay such expenditures in proportion, with respect to each such project, to the applicable portion of the Debt Service Annual Contribution determined pursuant to clauses (a), (b), (c), or (d) of section 5(C)(1) of this Attachment. However, any amounts that would otherwise be applied to the payment of principal under the second order of preference may be withheld for not more than twelve months and be used for the payment of interest on any bonds that may be subsequently issued to refund such Notes and expenditures.

(7) When monies sufficient for the payment and discharge of all bonds have been deposited in trust for such purpose with the Fiscal Agent, Accruing Annual Contributions, and monies otherwise payable to the Debt Service Fund shall be applied, as approved by HUD, to the payment of the Notes and expenditures and in the proportions as prescribed in subsection (C)(6) of this section 5. Monies so applied by the HA during the twelve month period preceding each Annual Contribution Date which, except for the provisions of this subsection (C)(7), would have been on deposit on such Annual Contribution Date in the Debt Service Fund for the reduction

of annual contributions, shall be deemed to have been on deposit in the Debt Service Fund on such Annual Contribution Date for the purpose of subsection (2) of this section 5(C).

(8) HUD shall not pay or make available any Accruing Annual Contribution pursuant to this ACC in excess of an amount which, together with all monies then on deposit in the Debt Service Fund, shall be sufficient to fully pay and retire the outstanding Bonds, Permanent Notes, Project Loan Notes, and Project Notes issued in connection with all projects for which annual contributions become payable and to repay, with interest at the applicable Loan Interest Rate, all expenditures made by HUD in connection with the development of such projects pursuant to section 13 of this Attachment. The obligation of HUD to pay or make available Debt Service Annual Contributions pursuant to this ACC with respect to any such project shall terminate when: (a) all such Bonds and Notes issued in connection with the project have been fully paid and retired, or when monies sufficient for their payment and retirement have been deposited in trust for such purpose in accordance with the terms of such bonds and notes; and (b) all such expenditures, with interest thereon, by HUD in connection with such project are fully repaid.

Section 6 - Debt Service Fund.

(A) Upon the delivery of any issue of bonds, there shall be deposited in the Debt Service Fund the amounts required pursuant to subsections (B), (C), and (D) of section 4 of this Attachment.

(B) Within sixty calendar days after the end of each fiscal year, the HA shall deposit with HUD for the reduction of debt service annual contributions:

(1) The amount of the interest on each issue of bonds bearing a Bond Date not later than seventeen months and fourteen days prior to the Annual Contribution Date next following the end of such fiscal year, which accrued during such fiscal year after (i) the date that is six months after the Bond Date of each such issue of Bonds; or (ii) the date of delivery of such issue, whichever is later, up to (i) the Date of Full Availability of the project financed by such issue or (ii) the end of such fiscal year, whichever is earlier; and

(2) The amount of any unpaid interest, on Permanent Notes and Project Notes issued in connection with any project that was permanently financed on or before the last day of such fiscal year by an issue of Bonds bearing a Bond Date not later than seventeen months and fourteen days prior to the Annual Contribution Date next following the end of such fiscal year, up to (i) the Date of Full Availability of such project or (ii) the end of such fiscal year, whichever is earlier.

(C) Upon receipt from HUD of each Accruing Annual Contribution or installment thereof, such amount shall be deposited in the Debt Service Fund.

(D) On each interest payment date of the bonds, the Fiscal Agent shall, out of the Debt Service Fund, pay the principal and interest maturing on the bonds.

(E) On the first day of the month following each Annual Contribution Date the Fiscal Agent shall, out of the Debt Service Fund, reimburse the HA for any advance made pursuant to subsection (D) of section 4 of this Attachment on account of interest on issues of bonds bearing a Bond Date not later than seventeen months and fourteen days prior to such Annual Contribution Date.

(F) On the first day of the month following each Annual Contribution Date, the Fiscal Agent, after (1) paying all bonds and bond interest that have then become due and payable, or that will become due and payable on the next succeeding anniversary of the Bond Date, (2) making provision for the Bond Service Carry-Over, shall, unless otherwise approved by HUD, apply the balance in the Debt Service Fund in the following order: First, to the payment of interest and principal of the notes and repayment of the expenditures in the same manner, and to the same extent as prescribed in subsection (C)(7) of section 5 of this Attachment; and, Second, to transfer to the Advance Amortization Fund. In making provision for the payment of the bonds and bond interest that shall become due on the next succeeding anniversary of the Bond Date and for the Bond Service Carry-over, the Fiscal Agent shall consider the second installment, if any, of the Accruing Annual Contribution as if it had actually been paid on the Annual Contribution Date.

Section 7 - Advance Amortization Fund.

(A) There shall be deposited in the Advance Amortization Fund the following: (1) bond premiums as provided in subsection (B) of section 4 of this Attachment; (2) amounts transferred from the Debt Service Fund, as provided in subsection (F) of section 6 of this Attachment, and (3) proceeds of claims against insurers and others arising out of damage to or destruction of any project to the extent provided in subsection (D) of section 1 of this Attachment.

(B) The Fiscal Agent shall as rapidly as possible apply all monies deposited in the Advance Amortization Fund, as directed by the HA with the approval of HUD: (1) to the payment of interest of the notes and the repayment of expenditures in the same manner and to the same extent as prescribed in subsection (C)(7) of section 5 of this Attachment; (2) to the purchase, at not more than the cost of redemption, of any outstanding bonds; and (3) to the redemption of any outstanding bonds on the terms provided in the Bond Resolutions. All bonds purchased or redeemed by or on behalf of the HA shall be immediately cancelled and shall not be reissued.

(C) In the event that, sixty-one days after the end of any fiscal year, it appears that the balance then on deposit in the Advance Amortization Fund, together with all monies then on deposit in the Debt Service Fund together with a Debt Service Annual Contribution, would be sufficient to fully pay and retire the outstanding bonds, permanent notes, project loan notes, and project

notes issued in connection with projects for which annual contributions have then become payable and to repay, with interest at the applicable Loan Interest Rate, all expenditures made by HUD in connection with the development of such projects pursuant to section 13 of this Attachment, the Fiscal Agent shall on such date deposit in the Debt Service Fund for the reduction of annual contributions the balance then remaining in the Advance Amortization Fund, and any deposits that would, except for this subsection (C), be made to the Advance Amortization Fund shall be made to the Debt Service Fund for the reduction of annual contributions.

Section 8 - General Limitations on Annual Contributions.

(A) Notwithstanding any other provision of this ACC, not more than one annual contribution for each year of the Maximum Contribution Period of any project shall be paid or made available by HUD for such project; nor shall any such annual contribution be paid or made available for any such project subsequent to the end of the Maximum Contribution Period of such project.

(B) No annual contribution shall be paid or made available by HUD for any project (except as provided in section 12 of this Attachment) unless such project is exempt from all real and personal property taxes levied or imposed by the State, city, county, or other political supervision.

(C) No annual contributions shall be paid or made available by HUD for any project (except as provided in section 12 of this Attachment) in the event of the acquisition of such project by a third party in any manner including a bona fide foreclosure under a mortgage or other lien.

Section 9 - Pledge of Annual Contributions.

(A) The amounts required by subsections (B), (C), and (D) of section 4 of this Attachment to be deposited in the Debt Service Fund upon delivery of each issue of Bonds on account of the interest on such issues of bonds that becomes due and payable six months and twelve months, respectively, from the Bond Date of such issue shall be pledged to the payment of such interest.

(B) The Accruing Annual Contribution that is due and payable on each Annual Contribution Date (including the second installment thereof if any) together with (1) the aggregate Bond Service Carry-Over, if any, required to be on deposit in the Debt Service Fund on such Annual Contribution Date, and (2) all other amounts required to be deposited in the Debt Service Fund for the reduction of annual contributions during the twelve month period ending with such Annual Contribution Date, shall be pledged as follows:

(1) An amount equal to the principal and interest becoming due and payable during the twelve month period following such Annual Contribution Date on each issue of Bonds bearing a Bond Date not later than seventeen months and fourteen days prior to such Annual

Contribution Date shall be pledged for the payment of such principal and interest;

(2) An amount equal to the aggregate Bond Service Carry-Over required to be on deposit in the Debt Service Fund on the next succeeding Annual Contribution Date shall be pledged for the purpose of providing such Carry-Over; and

(3) An amount equal to the sum of the portions of the Debt Service Annual Contributions as determined pursuant to clauses (a), (b), (c), and (d) of section 5(C)(1) of this Attachment shall be pledged for the payment of the interest and principal of the Permanent Notes, Project Loan Notes and Project Notes and repayment of expenditures made by HUD pursuant to section 13 of this Attachment in connection with Projects with respect to which annual contributions have become payable.

(C) The annual contributions to be made available by HUD hereunder shall not, without the approval of HUD, be pledged for any purpose other than as specifically provided in this ACC.

Section 10 - Refunding of Bonds.

The HA may, with the approval of HUD, refund any outstanding issue of Bonds upon such terms and conditions as may be mutually agreed upon between the HA and HUD.

Section 11 - Faith of the United States Pledged to Payment of Annual Contributions.

As set forth in the Act, the faith of the United States is solemnly pledged to the payment of all annual contributions contracted for in this ACC, and by the provisions of the Act there is authorized to be appropriated in each Federal fiscal year, out of any money in the Treasury of the United States not otherwise appropriated, the amounts necessary to provide for such payment.

Section 12 - Continuance of Annual Contributions.

(A) HUD hereby determines that sections 17 and 18, Part A, of the ACC include provisions that are in accordance with section 6(g)(2) of the Act.

(B) Whenever the annual contributions, pursuant to this ACC, have been pledged by the HA as security for the payment of the principal and interest on the Bonds or other obligations issued pursuant to this ACC, HUD (notwithstanding any other provisions of this ACC) shall continue to make the annual contributions provided in this ACC available for the projects so long as any of such Bonds or obligations remain outstanding; and, in any event, such annual contributions shall in each year be at least equal to an amount which, together with such income or other funds as are actually available from the projects for the purpose at the time such annual contribution

is made, shall suffice for the payment of all installments, falling due within the next succeeding twelve months, of principal and interest on the Bonds or other obligations for which the annual contributions provided for in this ACC have been pledged as security: ~~provided~~, That in no case shall such annual contributions be in excess of the maximum sum specified in this ACC, nor for longer than the remainder of the maximum period fixed by this ACC.

**Section 13 - Rights and Obligations of HUD During Tenure Under
Section 18, Part A, of the ACC.**

Neither the conveyance of title to or the delivery of possession of the projects by the HA pursuant to section 18, Part A, of the ACC, nor the acceptance of such title or possession by HUD, shall abrogate or affect in any way any indebtedness of the HA to HUD arising under this ACC, and in no event shall any such conveyance or delivery or any such acceptance be deemed to constitute payment or cancellation of any such indebtedness.

ATTACHMENT VII

Insurance Requirements

Section	Page
Section 1	Mandatory and Optional Insurance Coverage. VII-1
Section 2	Authorized Insurance Companies. VII-2
Section 3	Certificates of Insurance. VII-2
Section 4	Waivers and Self-Insurance Funds. VII-2

Section 1 - Mandatory and Optional Insurance Coverage.

The following types of insurance are either required or should be purchased if the HA determines that exposure exists.

(A) **Commercial Property.** Mandatory. Each policy must be written with a blanket limit, on a replacement cost basis, and with an agreed value clause eliminating any coinsurance provision.

(B) **Commercial General Liability.** Mandatory.

(C) **Workers Compensation and Employers Liability.** Mandatory.

(D) **Owned and Non-Owned Automobile Liability.** Mandatory.

(E) **Theft, Disappearance, and Destruction.** Mandatory only if the amount of cash and checks on hand at any one time exceeds the amount prescribed by HUD.

(F) **Employee Dishonesty.** Mandatory.

(G) **Boiler and Machinery.** Mandatory only if steam boilers have been installed. However, coverage is recommended if there is extensive central air conditioning, electrical transformers, or similar equipment.

(H) **Flood.** Mandatory only for property located in a flood plain, as determined in the Federal Government's National Flood Insurance Program.

(I) **Directors and Officers or Public Officials Liability.** Optional coverage, but highly recommended.

(J) **Lead-Based Paint Liability.** Mandatory for HAs undergoing lead-based paint testing and abatement.

(K) **Law Enforcement Liability.** Optional, but highly recommended where the exposure exists, and the Commercial General Liability insurer has excluded coverage.

Section 2 - Authorized Insurance Companies.

Insurance must be purchased from an insurance company or other entity that is licensed or duly authorized to write insurance in the State where the HA is located.

Section 3 - Certificates of Insurance.

At each renewal, the HA shall promptly have certificates of insurance submitted by the insurers to HUD describing the types of coverage, limits of insurance, policy numbers, and inception and expiration dates.

Section 4 - Waivers and Self-Insurance Funds.

Requests for waivers not to purchase any form of required insurance, or to establish a self-insurance fund in lieu of purchasing insurance, must be submitted to HUD for approval with a justification as to why the request should be approved.

Section 3 Summary Report

Economic Opportunities for Low – and Very Low-Income Persons

U.S. Department of Housing
and Urban Development
Office of Fair Housing
And Equal Opportunity

OMB Approval No: 2529-0043
(exp. 11/30/2010)

HUD Field Office:

Section back of page for Public Reporting Burden statement

1. Recipient Name & Address: (street, city, state, zip)	2. Federal Identification: (grant no.)	3. Total Amount of Award:
	4. Contact Person	5. Phone: (Include area code)
	6. Length of Grant:	7. Reporting Period:
8. Date Report Submitted:	9. Program Code: (Use separate sheet for each program code)	10. Program Name:

Part I: Employment and Training (** Columns B, C and F are mandatory fields. Include New Hires in E &F)

A Job Category	B Number of New Hires	C Number of New Hires that are Sec. 3 Residents	D % of Aggregate Number of Staff Hours of New Hires that are Sec. 3 Residents	E % of Total Staff Hours for Section 3 Employees and Trainees	F Number of Section 3 Trainees
Professionals					
Technicians					
Office/Clerical					
Construction by Trade (List Trade)					
Trade					
Trade					
Trade					
Trade					
Other (List)					
Total					

* Program Codes
1 = Flexible Subsidy
2 = Section 202/811

3 = Public/Indian Housing
A = Development,
B = Operation
C = Modernization

4 = Homeless Assistance
5 = HOME
6 = HOME State Administered
7 = CDBG Entitlement

8 = CDBG State Administered
9 = Other CD Programs
10 = Other Housing Programs

Part II: Contracts Awarded

1. Construction Contracts:

A. Total dollar amount of all contracts awarded on the project	\$
B. Total dollar amount of contracts awarded to Section 3 businesses	\$
C. Percentage of the total dollar amount that was awarded to Section 3 businesses	%
D. Total number of Section 3 businesses receiving contracts	

2. Non-Construction Contracts:

A. Total dollar amount all non-construction contracts awarded on the project/activity	\$
B. Total dollar amount of non-construction contracts awarded to Section 3 businesses	\$
C. Percentage of the total dollar amount that was awarded to Section 3 businesses	%
D. Total number of Section 3 businesses receiving non-construction contracts	

Part III: Summary

Indicate the efforts made to direct the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs, to the greatest extent feasible, toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. (Check all that apply.)

- ☐ Attempted to recruit low-income residents through: local advertising media, signs prominently displayed at the project site, contracts with the community organizations and public or private agencies operating within the metropolitan area (or nonmetropolitan county) in which the Section 3 covered program or project is located, or similar methods.
- ☐ Participated in a HUD program or other program which promotes the training or employment of Section 3 residents.
- ☐ Participated in a HUD program or other program which promotes the award of contracts to business concerns which meet the definition of Section 3 business concerns.
- ☐ Coordinated with Youthbuild Programs administered in the metropolitan area in which the Section 3 covered project is located.
- ☐ Other; describe below.

Public reporting for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB number.

Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, mandates that the Department ensures that employment and other economic opportunities generated by its housing and community development assistance programs are directed toward low- and very-low income persons, particularly those who are recipients of government assistance housing. The regulations are found at 24 CFR Part 135. The information will be used by the Department to monitor program recipients' compliance with Section 3, to assess the results of the Department's efforts to meet the statutory objectives of Section 3, to prepare reports to Congress, and by recipients as self-monitoring tool. The data is entered into a database and will be analyzed and distributed. The collection of information involves recipients receiving Federal financial assistance for housing and community development programs covered by Section 3. The information will be collected annually to assist HUD in meeting its reporting requirements under Section 808(e)(6) of the Fair Housing Act and Section 916 of the HCDA of 1992. An assurance of confidentiality is not applicable to this form. The Privacy Act of 1974 and OMB Circular A-108 are not applicable. The reporting requirements do not contain sensitive questions. Data is cumulative; personal identifying information is not included.

Form HUD-60002, **Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons.**

Instructions: This form is to be used to report annual accomplishments regarding employment and other economic opportunities provided to low- and very low-income persons under Section 3 of the Housing and Urban Development Act of 1968. The Section 3 regulations apply to any **public and Indian housing programs** that receive: (1) development assistance pursuant to Section 5 of the U.S. Housing Act of 1937; (2) operating assistance pursuant to Section 9 of the U.S. Housing Act of 1937; or (3) modernization grants pursuant to Section 14 of the U.S. Housing Act of 1937 and to **recipients of housing and community development assistance in excess of \$200,000** expended for: (1) housing rehabilitation (including reduction and abatement of lead-based paint hazards); (2) housing construction; or (3) other public construction projects; and to **contracts and subcontracts in excess of \$100,000** awarded in connection with the Section-3-covered activity.

Form HUD-60002 has three parts, which are to be completed for all programs covered by Section 3. Part I relates to **employment and training**. The recipient has the option to determine numerical employment/training goals either on the basis of the number of hours worked by new hires (columns B, D, E and F). Part II of the form relates to **contracting**, and Part III summarizes recipients' **efforts** to comply with Section 3.

Recipients or contractors subject to Section 3 requirements must maintain appropriate documentation to establish that HUD financial assistance for housing and community development programs were directed toward low- and very low-income persons.* A recipient of Section 3 covered assistance shall submit one copy of this report to HUD Headquarters, Office of Fair Housing and Equal Opportunity. Where the program providing assistance requires an annual performance report, this Section 3 report is to be submitted at the same time the program performance report is submitted. Where an annual performance report is not required, this Section 3 report is to be submitted by January 10 and, if the project ends before December 31, within 10 days of project completion. **Only Prime Recipients are required to report to HUD. The report must include accomplishments of all recipients and their Section 3 covered contractors and subcontractors.**

HUD Field Office: Enter the Field Office name.

1. Recipient: Enter the name and address of the recipient submitting this report.
2. Federal Identification: Enter the number that appears on the award form (with dashes). The award may be a grant, cooperative agreement or contract.
3. Dollar Amount of Award: Enter the dollar amount, rounded to the nearest dollar, received by the recipient.
- 4 & 5. Contact Person/Phone: Enter the name and telephone number of the person with knowledge of the award and the recipient's implementation of Section 3.
6. Reporting Period: Indicate the time period (months and year) this report covers.
7. Date Report Submitted: Enter the appropriate date.

8. Program Code: Enter the appropriate program code as listed at the bottom of the page.
9. Program Name: Enter the name of HUD Program corresponding with the "Program Code" in number 8.

Part I: Employment and Training Opportunities

Column A: Contains various job categories. Professionals are defined as people who have special knowledge of an occupation (i.e. supervisors, architects, surveyors, planners, and computer programmers). For construction positions, list each trade and provide data in columns B through F for each trade where persons were employed. The category of "Other" includes occupations such as service workers.

Column B: (Mandatory Field) Enter the number of new hires for each category of workers identified in **Column A** in connection with this award. New hire refers to a person who is not on the contractor's or recipient's payroll for employment at the time of selection for the Section 3 covered award or at the time of receipt of Section 3 covered assistance.

Column C: (Mandatory Field) Enter the number of Section 3 new hires for each category of workers identified in **Column A** in connection with this award. Section 3 new hire refers to a Section 3 resident who is not on the contractor's or recipient's payroll for employment at the time of selection for the Section 3 covered award or at the time of receipt of Section 3 covered assistance.

Column D: Enter the percentage of all the staff hours of new hires (Section 3 residents) in connection with this award.

Column E: Enter the percentage of the total staff hours worked for Section 3 employees and trainees (including new hires) connected with this award. Include staff hours for part-time and full-time positions.

Column F: (Mandatory Field) Enter the number of Section 3 residents that were trained in connection with this award.

Part II: Contract Opportunities

Block 1: Construction Contracts

Item A: Enter the total dollar amount of all contracts awarded on the project/program.

Item B: Enter the total dollar amount of contracts connected with this project/program that were awarded to Section 3 businesses.

Item C: Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

Item D: Enter the number of Section 3 businesses receiving awards.

Block 2: Non-Construction Contracts

Item A: Enter the total dollar amount of all contracts awarded on the project/program.

Item B: Enter the total dollar amount of contracts connected with this project awarded to Section 3 businesses.

Item C: Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

Item D: Enter the number of Section 3 businesses receiving awards.

Part III: Summary of Efforts – Self -explanatory

Submit one (1) copy of this report to the HUD Headquarters Office of Fair Housing and Equal Opportunity, at the same time the performance report is submitted to the program office. The Section 3 report is submitted by January 10. Include only contracts executed during the period specified in item 8. PHAs/IHAs are to report all contracts/subcontracts.

* The terms "low-income persons" and very low-income persons" have the same meanings given the terms in section 3 (b) (2) of the United States Housing Act of 1937. **Low-income persons** mean families (including single persons) whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that

The Secretary may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the Secretary's findings such that variations are necessary because of prevailing levels of construction costs or unusually high- or low-income families. **Very low-income persons** mean low-income families (including single persons) whose incomes do not exceed 50 percent of the median family income area, as determined by the Secretary with adjustments or smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

Wage and Hour Division

PAYROLL

For contractor's optional use; see instructions at dol.gov/agencies/whd/forms/wh347

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.



WAGE AND HOUR DIVISION

Revised December 2008

OMB No. 1235-0008
Expires 09/30/2026

NAME OF CONTRACTOR							OR SUBCONTRACTOR								ADDRESS						OMB No. 1235-0008 Expires 09/30/2026	
PAYROLL NO.				FOR WEEK ENDING					PROJECT AND LOCATION						PROJECT OR CONTRACT NO.							
(1)	(2)	(3)	(4) DAY AND DATE	(5)	(6)	(7)	(8)						(9)									
NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	NO. OF WITHOLDING EXEMPTIONS	WORK CLASSIFICATION					OT. OR ST.	TOTAL HOURS	RATE OF PAY	GROSS AMOUNT EARNED	DEDUCTIONS											
											FICA	WITH- HOLDING TAX				OTHER	TOTAL DEDUCTIONS	NET WAGES PAID FOR WEEK				
			HOURS WORKED EACH DAY																			
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While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20210

(over)

Date _____

I, _____
(Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by _____ on the _____
(Contractor or Subcontractor)
_____ ; that during the payroll period commencing on the _____
(Building or Work)
_____ day of _____, _____, and ending the _____ day of _____, _____,
all persons employed on said project have been paid the full weekly wages earned, that no rebates have
been or will be made either directly or indirectly to or on behalf of said
_____ from the full
(Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly
from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part
3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948,
63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are
correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the
applicable wage rates contained in any wage determination incorporated into the contract; that the classifications
set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship
program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and
Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered
with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:
(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

- in addition to the basic hourly wage rates paid to each laborer or mechanic listed in
the above referenced payroll, payments of fringe benefits as listed in the contract
have been or will be made to appropriate programs for the benefit of such employees,
except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

- Each laborer or mechanic listed in the above referenced payroll has been paid,
as indicated on the payroll, an amount not less than the sum of the applicable
basic hourly wage rate plus the amount of the required fringe benefits as listed
in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE	SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR
SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 3729 OF
TITLE 31 OF THE UNITED STATES CODE.