

**Invitation for Bids**

**No. IFB-12-736**

**Prune Tree Limbs at South Scattered Sites  
(6 Locations)**

**Issued By:**

**The Housing Authority of Kansas City, Missouri  
920 Main Street, Suite 701  
Kansas City, Missouri 64105**

**June 25, 2012**

**VISITORS MUST ENTER AT 10<sup>TH</sup> STREET  
ENTRANCE  
AND SIGN-IN AT SECURITY DESK**

**INVITATION FOR BIDS  
IFB-12-736**

**THE ABOVE NUMBER MUST APPEAR ON ALL RESPONSES AND RELATED CORRESPONDENCE.**

**REQUEST DATE: June 25, 2012      THIS IS NOT AN ORDER**

**Bids Due:  
July 11, 2012, 2:00 p.m.**

**Barbara Lockhart  
Director, OPC**

**Pre-Bid Conference  
June 25, 2012, 10:00 a.m.  
beginning at 1925 E. 74<sup>th</sup> St.**

**[blockhart@hac.org](mailto:blockhart@hac.org)  
Ph. (816) 968-4269  
Fax (816)285-4012**

**PART ONE  
INTRODUCTION AND BID STRUCTURE**

1. The Housing Authority of Kansas City, Missouri is organized under the laws of the State of Missouri. It owns and operates over 1900 units of conventional public housing in multifamily and single-family sites through the city and provides rental assistance subsidies to approximately 7500 households under the Section 8 Housing Assistance Payment Program. The agency has an annual operating budget of \$20 million. Receives approximately \$3.5 million in annual Capitol Fund program allocations and maintains funding awards for the HOPE VI and Public Housing Development Programs. HAKC also funds and manages a variety of social service and economic development programs for its residents.
  
2. There will be a pre-bid conference for this project at **10:00 am, June 25, 2012**, beginning at **1925 E. 74<sup>th</sup> St., KCMO**. Refer to [mapquest.com](http://mapquest.com), for directions from your location.

3. For the convenience of the bidder, this solicitation is structured as follows:

Part I Introduction and Bid Structure

Part II Scope of Work Description and Terms

Bid Forms (Pricing page)

Bid Documents

- a. Davis-Bacon Wage Determination
- b. Non-Collusive Affidavit
- c. References (pertaining to similar projects)
- d. Listing of Proposed Subcontractors
- e. Statement of Qualifications
- f. Joint Venture Questionnaire
- g. Section 3 Brochure
- h. Section 3 Examples
- i. General Contract Conditions – HUD 5370-EZ
- j. Instructions to Offerors – HUD 5369
- k. Certifications and Representations of Offerors –HUD 5369-A

## PART TWO

### 1. SCOPE OF WORK

The Housing Authority of Kansas City, Missouri (HAKC) is seeking bids to contract with qualified companies or individuals for **Prune Tree Limbs, South Scattered Sites (6 locations)** in accordance with the attached scope of work. Work must be completed within **12 working days** from the date of the Notice to Proceed. The time allocated for this project includes **5 days** for inclement weather.

**The successful contractor will be required to provide a work schedule in writing within 5 days of signing the Notice to Proceed which will be enforced to the greatest extent possible. All work must be performed in accordance with industry standards.**

In the event that the contractor has not completed the work within the specified time frame, the contractor agrees to have deducted from the Contract Sum, the daily liquidated damage amount of **\$35.00** for each calendar day in excess of this allotted time. Therefore it is critical both the start date (and time) and completion date (and time) be recorded. Exceptions would be granted for delays caused by Owner or modifications to the scope, (See 6.0 Provisions for Changes or Amendments).

### 2. TAXES

HAKC is a sales tax exempt entity. Copies of the sales tax exemption information will be provided to the successful bidder on request. The contractor shall not include in the bid amount, any taxes chargeable against the performance of the work.

### 3. PERMITS

Before starting work, the contractor shall obtain and pay for all necessary permits and licenses whether issued by the State, County, or City, and furnish proof of insurance as required, for all work under these specifications. The contractor shall be held responsible for all violations for any cause in connections with the work.

### 4. CHARACTER OF WORKMEN AND WORK

At all times, the contractor shall be responsible for the conduct and discipline of his employees and/or any subcontractor or persons employed by subcontractors. All workers must have sufficient knowledge, skill and experience to perform the work assigned to them properly.

### 5. ASSIGNMENT OF THE CONTRACT

The contractor shall not enter into any sub-contracts' or assign, transfer, convey or otherwise dispose of the ensuing contract, or any and all of its rights, title or interest, or its power to execute such contract to any person, company, or corporation without the written consent of HAKC.

6. PROVISIONS FOR CHANGES OR AMENDMENTS.

If any time HAKC desires to expand, alter, or terminate a portion of the scope of work, as defined herein, the contract will be amended to reflect these changes at costs/deductions acceptable to both parties. HAKC shall provide prior written notice to the contractor for any changes to the scope of work. The contractor shall not hold the Authority responsible for termination due to no fault of HAKC.

**As it relates to the foregoing paragraph, all directions to the contractor, and all changes or amendments to the project, between the contractor and the HAKC must come through the Project Manager, Michael Ponnle, 816-365-8428. The HAKC will not be responsible for payment for any change(s) not authorized in advance, by the Project Manager.**

7. SECTION 3 REQUIREMENTS

Section 3 of the Housing and Urban Development Act of 1968, as amended, requires, to the greatest extent feasible, opportunities for job training and employment be given to lower income residents of the federally funded area, and contracts for work in connection with the Section 3 covered project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the Section 3 area. Section 3 requires that a recipient/contractor take affirmative steps to give preference to qualified Section 3 area residents and business concerns in providing training, employment and contracting in connection with Section 3 covered projects. As a recipient of HUD funding, HAKC maintains an aggressive Section 3 policy, which emphasizes employment of public housing residents, or other low-income residents on contracts let by the Authority and that affirmative efforts be taken to contract with Section 3 business concerns, which includes resident-owned businesses.

HAKC believes that Section 3 is an effective tool for advancing economic development and self-sufficiency opportunities for public housing residents. HAKC requires the contractor to emphasize resident hiring for new positions required because of this contract. See "Section 3 Program" attachment for additional information on compliance with Section 3 requirement.

8. INSURANCE, BONDING AND HOLD HARMLESS AGREEMENT

The contractor must carry insurance with respect to property and operations as set forth below. If applicable, Fidelity Bond requirements may be set prior to contract execution.

Liability/Bodily Injury

- A) **Three million dollars (\$3,000,000) for all claims arising out of a single occurrence;**
- B) **Four hundred thousand dollars (\$400,000) for any person in a single accident or occurrence;**

And

Property Damage

C) **Five hundred thousand dollars (\$500,000) for each occurrence.**

In addition, the contractor agrees that it will indemnify and hold HAKC harmless for any acts, including acts of negligence, on the part of the contractor's agents or employees and from any and all claims on or about the premises resulting from the acts, including acts of negligence, of the contractor, its employees, or agents. The contractor shall investigate and furnish HAKC with full reports on all accidents, claims and potential claims for damages relating to the services provided under this contract, and will cooperate fully with HAKC and its' agents in connection with all claims.

**A bid submission of \$25,000.00 or higher must be accompanied by a negotiable bid guarantee of 5% of the amount of the bid.**

As a "public entity" seeking to enter into a written contract with a "Contractor" for a "public works" project as those terms are defined in Section 107.170 RSMo., estimated to exceed the sum of twenty five thousand (\$25,000.00) dollars, the HAKC must require the Contractor to furnish to HAKC a payment bond with good and sufficient sureties in the amount of **one hundred per cent (100%)** of the total cost of the contract and such bond, among other conditions, shall be conditioned for the payment of any and all materials, incorporated, consumed, or used in connection with the construction of such work, and all insurance premiums, both for compensation, and for all other kinds of insurance, said work, and for all labor performed in such work whether by subcontractor or otherwise. As an additional condition of the contract the Contractor shall also furnish to HAKC a performance bond with good and sufficient sureties in the amount of **one hundred per cent (100%)** of the total cost of the contract whereby said surety shall, among other things, insure for the completion of all work that is the subject of the contract. All bonds executed and furnished pursuant to this contract shall be deemed to contain the requirements and conditions set out within Section 107.170 RSMo., regardless of whether the same be set forth in said bond, or of any terms or provisions of the said bond to the contrary notwithstanding.

9. PAYMENT

**In order for payment to be processed, the contractor must:**

- a. Certify that no additional staff was hired in order to complete this project. This will be verified by submission of the payroll sheets, (if Davis Bacon applies).
- b. If additional staff is to be hired, contractor must advertise in the newspaper of record for the area, and demonstrate that additional contacts were made to locate qualified Section 3 residents. Sources for locating Section 3 residents include the individual development where the work is to be performed; other HAKC developments; HAKC's Department of Resident Services; the City of Kansas City, Missouri; etc. If additional staff were hired, contractor must show proof that 30% of those hired (one individual hired for each three positions

filled) are Section 3 residents in accordance with current median income data. This information can be found at the following website:

[www.factfinder.census.gov/home/saff/main.html](http://www.factfinder.census.gov/home/saff/main.html).

- c. If no qualified Section 3 residents are available, the contractor must show proof of attempts to locate and hire Section 3 residents.
- d. If additional staff are hired for this project, one-third (1/3) of the available hours for the "new" positions must be worked by the Section 3 resident.
- e. For additional information, contractors may refer to 24, CFR, Sec. 135.38.
- f. Contractor shall certify that all employees of the contractor are United States citizens or have work visas to work in the United States. Copies of the work visas shall be submitted with the first payroll sheets submitted to Contracts requesting payment.

The contractor shall invoice per the firm, fixed prices indicated on the Bid Form. The firm, fixed prices shall be legally binding for the entire term of the contract. The Project Manager must approve all invoices prior to payment. When providing services, contractor must obtain the signature of the Property Manager or their designee, on the work order or receipt, to verify the service/work provided is complete, satisfactory and in accordance with the scope of work. Without this signature, payment cannot be processed. **Invoices/ Payment Certification Packets for contracts over \$2,000.00, which require Davis-Bacon wages, must have "Payroll Form WH-347" attached.**

**In addition, HAKC will not process any invoice(s) for payment until the required certified payrolls, citizenship status, Section 3 certifications, and all other evidentiary documentation is received.**

The contractor shall submit all requests for payment under this contract to:  
**Linda Morales, Contracts, 920 Main Street, Suite 701, Kansas City, MO 64105.**

#### 10. QUESTIONS

Questions relating to the bid content or procedures for submission must be submitted in writing, by fax or e-mail to:

Barbara Lockhart, Fax (816) 285-4012 or [blockhart@hkc.org](mailto:blockhart@hkc.org).

#### 11. SUBMISSION REQUIREMENTS

Sealed bids must be received at the offices of the Housing Authority of Kansas City, Missouri no later than **2:00 PM, July 11, 2012**. Bids must be addressed to the attention of Linda Morales, Office of Procurement and Contracts and mailed or delivered to HAKC, 920 Main Street, Suite 701, Kansas City, MO 64105.

Each response to this Invitation for Bids must include one original and one copy, and be clearly identified as a response to the **Invitation for Bid No IFB-12-736**. Any submission received later than **2:00 PM, July 11 2012**, will not be accepted. **The bidder shall submit a minimum of three references, including contact persons and telephone numbers, for which similar services have been provided under contract.**

The bidder is also responsible for demonstrating adequate staffing for managing multiple jobs within the periods specified herein. In addition, the following documents must be submitted with the bid even if you are not a new contractor with HAKC.

- a. Bid Bond (if required)
- b. Bid Form
- c. Statement of Qualifications (attachment)
- d. Listing of proposed Subcontractors (attachment)
- e. References (for similar projects)
- f. Non-Collusive Affidavit (attachment)
- g. HUD 5369-A or HUD 5369-C (as required)
- h. Insurance Certification (**see new contract requirements**)
- i. Section 3 Program (certificate – if applicable)

When the contractor is declared the successful bidder, and at the time the contract is signed, he/she will be asked to certify that:

- a. Contractor is aware that Davis Bacon wages apply
- b. Contractor will, or will not, be required to hire additional staff
- c. Contractor will comply with, and provide documentation of US citizenship or legal status for all his/her employees

Failure to follow the instructions of this IFB/RFP may result in the elimination of your bid as being non-responsive. **Failure to sign your completed bid form will be cause for automatic rejection.**

HAKC reserves the right to consider historic information whether gained from the proposal, references, or any other source, in the evaluation process. HAKC also reserves the right to reject all bids/proposals, make no award, multiple or partial awards, and to waive any minor informality or irregularity in the bids/proposals received in response to this solicitation.

**NOTE: No information is available between the public opening of bids and award of a contract. Once the contract has been awarded, all information submitted in response to this solicitation will be available for public inspection in compliance with Federal, State and local laws.**

## 12. PROPOSED SCHEDULE

Pre-Bid Conference	June 25, 2012, 10:00 a.m.
Bids Due	July 11, 2012, 2:00 p.m.



**Page 1 of Bid Form  
IFB-736**

**Date:** \_\_\_\_\_

**FROM:** \_\_\_\_\_  
Hereinafter called the "Bidder"

**TO:** Housing Authority of Kansas City, Missouri  
920 Main Street, Suite 701  
Kansas City, Missouri 64105  
Hereinafter called the "Owner"

The undersigned bidder for \_\_\_\_\_,  
located at \_\_\_\_\_, in accordance with  
the applicable specifications and related documents prepared by the Housing Authority of  
Kansas City, Missouri, and having familiarized itself with the local conditions effecting the cost of  
the Work at the place where the Work is to be done (if applicable) and with the Instructions to  
Bidders, Plans and Specifications, General and Supplementary Conditions, Special Conditions,  
Form of Agreement and other Contract Documents, and having examined the location of the  
proposed Work and considered the availability of labor and materials, hereby proposes and  
agrees to perform everything required to be performed, and to provide and furnish all labor,  
materials, necessary tools, expendable equipment, and all utility and transportation service  
necessary to perform and complete in a workmanlike and timely manner all the Work required  
for **Prune Tree Limbs/South Scattered Sites (6) locations** in accordance with the scope of  
work, all in strict conformance with the Instructions to Bidders and other Contract Documents  
(including Addendum Nos \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, the receipt of which is hereby  
acknowledged,) for the lump sum(s) hereinafter specified.

**MBE/WBE PARTICIPATION**

The bidder agrees to make every effort to carry out this MBE/WBE policy through award of  
subcontracts to minority/women's business enterprises to the fullest extent consistent with the  
efficient performance of this contract.

The undersigned Bidder proposes to perform the work with the following MBE/WBE participation  
level:

**MBE** Percentage Participation \_\_\_\_\_ %  
**WBE** Percentage Participation \_\_\_\_\_ %

***BOTH pages of this Bid Form must be:  
filled out completely, signed and returned.***

***Failure to complete and submit all documents requested in  
this IFB may remove your bid from consideration.***

**Page 2 of Bid Form  
IFB-736**

BID IS FOR THE LUMP SUM OF:

\_\_\_\_\_ Dollars, (\$ \_\_\_\_\_)

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TIMING

The undersigned Bidder hereby agrees to commence the work required under his contract within ten (10) days from the date of a Notice to Proceed and agrees to substantially complete the Work or segments of the Work on or before the schedule dates, and to pay as liquidated damages the corresponding amount stipulated in contract documents, for each instance that the Work remains substantially incomplete in accordance with the Contract Documents.

The Bidder understands that the Owner reserves the right to reject any or all bids, to waive minor informalities in any bid, to award the contract in the Documents by mutual agreement with the successful bidder.

The Bidder agrees to deliver to the HAKC the Certification of Insurance, Representations, Certifications and Other Statements, HUD-5369-A/HUD-5369-C (as applicable) and Contractors Occupation Statement.

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Federal Tax ID Number

\_\_\_\_\_  
Authorized Officer/Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

Project: Prune Tree Limbs around the House and Over the Roof Top  
Locations: At 6 Different Locations as Indicated below.  
Development: South Scattered Sites.

May 24, 2012

### Locations:

10641 Bales; 11030 Booth; 11301 Booth; 7905 E. 92<sup>nd</sup> St; 1925 E. 74<sup>th</sup> St; 2011 E. Gregory St.

### Scope of Work:

General Specifications for Tree Cut & Limbs Trimming:

- Prune tree limbs back (irrespective of their sizes) 8'-0" from any part of the building and 15ft off the roof top. (*See additional instructions for each unit.*)
- Remove and re-install Chain Link Fence & Gates and pour fresh concrete around fence/gate posts to allow aerial lift machinery in the yard.
- Trees identified to cut down to stump or trunks must cut to the trunk.
- Remove and haul off tree limbs, shrubs, leaves and blow off sawdust on the ground irrespective of their sizes.
- Furnish and spread organic black soil over any damaged lawn and tire tracks around work areas, sow seeds and straws.

*Prune tree limbs to the trunk as specified at the following locations in addition to the general specifications above:*

10641 Bales:

- Prune to the trunk 9" dia., twin big limb with many limbs that stretched toward driveway.
- Prune to the trunk 16" dia., dying big limb with many limbs at the front of the house.
- Prune to the trunk all limbs on the roof at rear right corner.
- Clean the same tree up Prune to the trunk (4) 8" dia. tree limbs that stretched down to the ground and to the neighbor's house.

11301 Booth Avenue:

- Prune to the trunk (3) 8", 7", & 6" dia., limbs that stretched toward power line at the rear.
- Prune to the trunk (6) up to 6" dia., limbs that stretched toward the house at front.

11030

- Cut to the ground (6) 6" dia., trees that posed threat to the power lines at rear NW corner of the yard, this includes limbs from the neighbor that threaten the power lines as well.
- Cut down to the ground (1) 28" dia., apple tree with many big limbs at SW corner that drops small apples to the neighbor's yard and caused ceaseless flies.
- Prune to the trunk (2) 10" dia., limbs that stretched toward the roof approximately 28' long align to the exit door. Also, clean-up the tree from the ground to 15' high.
- Prune to the trunk (2) 8" dia., limbs that stretched toward the roof approximately 28' long align to the condensing unit. Also, clean up the tree from the ground to 20' high.
- Prune to the trunk all (possibly 10 dead limbs) that are visible around the yard irrespective of their sizes and heights.

7905 E. 92<sup>nd</sup> Street:

- Cut down to the ground 22" dia., dying tree at the front of the house.
- Prune to the trunk (3) up to 6" dia., limbs at SE corner of the house.
- Along the vertical line of chain link fence along West (right) side, prune all limbs that stretched over our fence line from the neighbor's trees.
- Cut down to the ground (4) 6", 8", & 9" dia., around SE corner of the yard.
- Cut down to the ground (3) up to 6" dia., at SE corner of the house.
- Clear the fence line along West and South sides at rear yard.

1925 E. 74<sup>th</sup> Street:

- Prune to the trunk (4) up to 6" dia., limbs stretched toward the roof at NW corner of the house.
- Along the vertical line of chain link fence at East side, prune (4) up to 5" dia., (all) limbs that stretched over our fence line from the neighbor's trees.
- Prune to the trunk (3) 7", 6", & 5" dia., all dead limbs at the front of the house.
- Prune to the trunk (1) 10" dia., big limb with many limbs that stretched toward the house along East side.
- Prune (1) 10" dia., tree with limbs stretched over the roof at SE corner of the house.
- Prune (3) 8" dia., limbs (along vertical line of our fence) that stretched over the fence line toward the house from the neighbor's trees at SE corner.

2011 E. Gregory Street:

- Prune to the trunk (3) up to 5" dia., limbs that stretched toward the roof at NE corner of the house.
- Prune to the trunk (1) 11" dia., big limb with many limbs that stretched over the roof at the rear around SE area.
- Also, remove dead (5) limbs around the main tree at the same location.
- Prune to the trunk, up to (9) 9" dia., limbs over the roof at SW corner of the house.

**General:**

**You are required to fill-out and submit the following documents as soon as you signed NTP for this project.**

- *Schedule of Values:* Provide a schedule of values showing the components of your work break down including (\$) value of each activity.
- *Work Schedule:* Provide a clear work schedules that reflect the start & finish of each activity of your work break down. (Schedule format included with contract package.)
- **Environmental Compliance:**  
The Contractor must verify that the Project is free from any violation of Federal, State, or Local environmental Laws.
- **Contractor's Safety Program on Job Site**  
Contractor must post Safety Flyers at a conspicuous location on the job site.

General Requirements:

*POST the following Flyers to an unrestricted area at your Job Site:*

- *Safety Program Flyer* and Binder for Material Safety Data Sheet (MSDS).
- *Davis-Bacon Wage Determination Sheets:* (Included in your Bid and Contract package) must post to area where is opened to the public.
- EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT POSTER. (The Poster is Included with your pay Application Package).

General Conditions:

- *Electricity and Water on Site:* Contractor is to provide own power source and water for this project. In a clear and unambiguous language, contractors are allowed to use resident's electricity and water.
- *Substantial Completion Notification:* contractor shall submit a written Application for Substantial Completion and Final Inspection stating the Status of the project. (See Contract Article 20.5.6).
- *Partial or Final Payment Request:* Contractor shall submit a written Application for partial or final Payment to the Project Manager. (See Contract Article 27.3)
- *Work Hours:* You are allowed to work 8 hours a day from 8:00 am to 5:00 pm Monday through Friday. No work on weekends or public holidays.
- *General Site Safety:* Keep the job site clean and safe all the time and remove all construction debris on daily basis.
- *Disposal of Construction Debris:* Contractor is responsible for the OFF-SITE disposal of construction debris and trash.

**Contract Duration:** You have 7 days to complete the project with additional 5 days for abnormal severe weather condition. Therefore, you have a total of 12 days to complete this project.

General Decision Number: MO120063 06/01/2012 MO63

Superseded General Decision Number: MO20100123

State: Missouri

Construction Type: Residential

County: Jackson County in Missouri.

RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories).

<u>Modification Number</u>	<u>Publication Date</u>
<u>0</u>	<u>01/06/2012</u>
<u>1</u>	<u>01/13/2012</u>
<u>2</u>	<u>02/03/2012</u>
<u>3</u>	<u>05/04/2012</u>
<u>4</u>	<u>06/01/2012</u>

BRMO0015-023 04/01/2011

<u></u>	<u>Rates</u>	<u>Fringes</u>
<u>BRICKLAYER.....</u>	<u>\$ 33.40</u>	<u>16.10</u>

CARP0005-011 04/01/2010

<u></u>	<u>Rates</u>	<u>Fringes</u>
<u>CARPENTER.....</u>	<u>\$ 26.22</u>	<u>12.00</u>

ELEC0124-001 09/01/2011

<u></u>	<u>Rates</u>	<u>Fringes</u>
<u>ELECTRICIAN.....</u>	<u>\$ 17.00</u>	<u>9.05</u>



SPRINKLER FITTER (Fire Sprinklers).....\$ 33.60 17.85

SFMO0669-005 04/01/2012

REMAINDER OF COUNTY

Rates Fringes

SPRINKLER FITTER (Fire Sprinklers).....\$ 30.52 18.40

SHEE0002-028 07/01/2011

Rates Fringes

SHEET METAL WORKER (Including HVAC Duct and HVAC System).....\$ 27.37 8.14

SUMO2011-007 08/11/2011

Rates Fringes

CEMENT MASON/CONCRETE FINISHER...\$ 16.00 0.00

LABORER: Common or General.....\$ 11.00 0.00

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).



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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

### Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters , PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable , i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rate.

### Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates

the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator

(See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

## NON-COLLUSIVE AFFIDAVIT

\_\_\_\_\_ being first duly sworn, deposes and says:

That he is \_\_\_\_\_.  
(Partner, Officer of Firm, Corp., etc.)

The party making the foregoing proposal or bid and attests to the following:

1. That affiant employed no person, corporation, firm association or other organization, either directly or indirectly, to secure the public contract under whose services in connection with the construction of the public building or project or in securing the public contract were in the regular course of their duties for affiant; and
2. That no part of the contract price received by affiant was paid or will be paid to any person, or corporation, firm association, or other organization for soliciting the contract, other than the payment of their normal compensation to persons regularly employed by the affiant who services in connection with the construction of the public building or project were in the regular course of their duties for affiant: and
3. That such proposal or bid is genuine and not collusive or sham; that said bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham bid or to refrain from bidding, and has not in any manner directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid price of affiant or of any other bidder, or to fix an overhead, profit or cost element of said bid price, or of that of any other bidder, or to secure any advantage against the Housing Authority of Kansas City, Missouri or any person interested in the proposed contract; and that all statements in said proposal or bid are true.

\_\_\_\_\_  
(Name of Firm)

\_\_\_\_\_  
(Signature of Bidder)

Subscribed and sworn to before me this \_\_\_\_\_ day \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires: \_\_\_\_\_

# REFERENCES

## BANKS

<i>Name</i>	<i>Address</i>	<i>Phone</i>	<i>Account #</i>

## TRADE

<i>Name</i>	<i>Address</i>	<i>Phone</i>	<i>Account #</i>

## SUBCONTRACTORS

<i>Name</i>	<i>Address</i>	<i>Phone</i>	<i>Account #</i>



## STATEMENT OF QUALIFICATIONS

All questions must be answered in a clear and comprehensive manner. If necessary, questions may be answered on separate attached sheet(s). This document must be notarized by a notary public.

1. Name of Company: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email: \_\_\_\_\_

2. Name of Owner(s): \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email: \_\_\_\_\_

3. Date Company was Established: \_\_\_\_\_

4. Are you a Sole Proprietorship?: \_\_\_\_\_

Partnership?: \_\_\_\_\_

Joint Venture?: \_\_\_\_\_

Corporation? \_\_\_\_\_

If a corporation, please enclose a copy of corporation papers and corporate seal.

5. How Many years have you been engaged in business under your present firm or trade name? \_\_\_\_\_

6. Give the name and address of any other contract firm under which the owners or partners have operated. Include dates:

NAME	ADDRESS	DATE

7. Current contracts: (Give name, address, phone number, amount of each contract, and appropriate anticipated date of starting and completion.)

NAME	ADDRESS	PHONE	AMOUNT	START	COMPLETE

8. General scope of work performed by your Company, (i.e., general contracting, specialty in any particular trade).

9. Are you minority owned? \_\_\_\_\_. If so, are you certified as an MBE/WBE with the City or State? \_\_\_\_\_. If yes, please attach a copy of this certification. Resident owned business? \_\_\_\_\_.

10. If so, provide the information below:

NAME	% of OWNERSHIP	RACE	SEX	TITLE



11. Are you in compliance with the Kansas City, Missouri Human Relations Department? \_\_\_\_\_. (Attach a copy of Certificate of Compliance from the City.)

12. City of Kansas City, Missouri occupation License Number: \_\_\_\_\_.  
(Enclose a copy)

13. Have you ever failed to complete any work awarded to you? \_\_\_\_\_ If so, when, where and why?

14. Have you ever defaulted on a contract? \_\_\_\_\_ If so, when, where and why?

15. List the more important projects recently completed by your company, stating the approximate cost for each, and the month and year completed. Include the name, address and phone number of each party.

NAME	ADDRESS	PHONE	AMOUNT	START	COMPLETE

16. List name, address, background and experience of the principal members of your organization, including the officers (if needed, use additional sheets).

NAME	ADDRESS	BACKGROUND EXPERIENCE

17. Has the company ever been party to or involved in any action related to discrimination based upon race, nationality, sex, or religion? \_\_\_\_\_ If so, give full details:

18. Has the company ever caused a lien for material or mechanical work default payment to be placed against owner? \_\_\_\_\_ If so, when, where, why and resolution:

19. Social Security Number: \_\_\_\_\_

20. Federal I.D. Number: \_\_\_\_\_

21. Insurance Company: \_\_\_\_\_

Amount of Insurance: \_\_\_\_\_

Bonding Agent: \_\_\_\_\_

Amount of Bond: \_\_\_\_\_

**Attach a copy of the insurance certificate.**

**(At contract signing a copy of the insurance certificate showing the Housing Authority of Kansas City, Missouri as Additional Insured will be required)**

22. Are you certified by any other agencies? \_\_\_\_\_

Names of Agencies:

23. Please sign the statement below to authorize the release of information to the HAKC for the purpose of verifying your references.

I hereby authorize the release of information to the Housing Authority of Kansas City, Missouri for the purpose of verifying my references.

\_\_\_\_\_  
Contractor's Signature

\_\_\_\_\_  
Date

**AUTHORIZATION FOR RELEASE OF INFORMATION**

The undersigned hereby authorizes and request any person, firm or corporation to furnish any information requested by the Housing Authority of Kansas City, Missouri in verification of the recitals comprising this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Name of Contractor: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF MISSOURI    )  
  ) SS  
COUNTY OF JACKSON )

\_\_\_\_\_ being duly sworn, deposes and says that he is \_\_\_\_\_ of \_\_\_\_\_ and that the answers to the foregoing questions and all statements therein contained are true and correct.

Subscribed and sworn to before me this \_\_\_\_\_ day \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires: \_\_\_\_\_

# JOINT VENTURE QUESTIONNAIRE

The following questionnaire must be fully completed and submitted concurrently with the Contractor's Occupation Statement by all Contractors submitted as a joint venture.

Names of Firms involved in the Joint Venture: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

1. Specify the percent of Minority Business Enterprise/Women Business enterprise (MBE/WBE) ownership in terms of profit and loss sharing.
2. Describe the Capital Contributions by each Joint Venturer.
3. Describe the financial controls of the Joint Venture: Who will keep the books, how will expenses to be reimbursed what is the authority of each Joint Venturer to commit to obligate the others?
4. Explain the relationship of ownership, options for ownership or loans between the Joint Venturers.
5. How and by whom will the on-site work be supervised?
6. Who will be responsible for material purchases and how will the purchases be financed?
7. Who will provide the equipment, the estimated cost thereof and how will the equipment be financed?
8. How and from whom will bonding be acquired; insurance; name of company(s) providing bonding and insurance.

9. Describe the experience and business qualifications of each Joint Venturer.

10. Submit copies of any Joint Venture Agreement.

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Date

# **Section 3**

## **Brochure**

## What is Section 3?

It is a means by which HUD fosters local economic development, neighborhood economic improvement, and individual self-sufficiency. Section 3 is the legal basis for providing jobs for residents and awarding contracts to businesses in areas receiving certain types of HUD financial assistance.

Under Section 3 of the HUD Act of 1968, wherever HUD financial assistance is expended for housing or community development, to the greatest extent feasible, economic opportunities will be given to Section 3 residents and businesses in that area.

## Section 3 Policy

Congress established the Section 3 policy to guarantee that the employment and other economic opportunities created by Federal financial assistance for housing and community development programs should, if possible, be directed toward low and very-low income persons, particularly those who are recipients of government assistance for housing.

## Who are Section 3 residents?

Section 3 residents are:

- Public Housing residents
- Low and very-low income persons who live in the metropolitan area or non-metropolitan county where a HUD-assisted project for housing or community development is located.

## Determining Income Levels

- Low income is defined as 80% or below the median income of that area
- Very-low income is defined as 50% or below the median income of that area
- Median incomes can be found using the [American Fact Finder](http://www.factfinder.census.gov/home/saff/main.html) at [www.factfinder.census.gov/home/saff/main.html](http://www.factfinder.census.gov/home/saff/main.html)

## What is a Section 3 business & what types of economic opportunities are available under Section 3?

A business:

- That is at least 51 percent or more owned by Section 3 residents,
- Whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents, or
- That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to a Section 3 business concern

Type of Opportunities:

- Job training
- Employment
- Contracts

Examples include:

<b><i>Administrative/ Management</i></b>	<b><i>Services</i></b>	<b><i>Construction</i></b>
accounting payroll research bookkeeping purchasing word processing	appliance repair florists marketing carpet installation janitorial photography catering landscaping printing computer/information manufacturing transportation	architecture bricklaying carpentry cement/masonry demolition drywall electrical elevator construction engineering fencing heating iron works machine operation painting plastering plumbing surveying tile setting

**Who will award the economic opportunities?**

Recipients of HUD financial assistance and their contractors and subcontractors are required to provide economic opportunities, to the greatest extent possible, consistent with existing Federal, State, and local laws and regulations.

**Who receives priority under Section 3?**

For training and employment:

- Persons in public and assisted housing
- Persons in the area where the HUD financial assistance is expended
- Participants in HUD Youthbuild programs
- Homeless persons

For contracting:

Businesses that meet the definition of a **Section 3 business owner**

**How can businesses find Section 3 residents to work for them?**

Businesses can recruit in the neighborhood and public housing developments to inform residents about available training and job opportunities. Distributing flyers, posting signs, placing ads, and contacting resident organizations and local community development and employment agencies to locate potential workers are effective ways of acquiring jobs.

**Are recipients, contractors and subcontractors required to provide long-term employment opportunities, and not simply seasonal or temporary employment?**

Recipients are required, to the greatest extent feasible, to provide all types of employment opportunities to low and very-low income person, including seasonal and temporary employment, as well as long-term jobs.



Employment goals are based on “new hires”, which are defined as full-time employees for permanent, temporary or seasonal employment opportunities.

Recipients and contractors are encouraged to provide long-term employment. At least 30 percent of the permanent, full-time employees hired should be Section 3 residents. After a Section 3 employee has been employed for 3 years, the employee may no longer be counted as a Section 3 employee to meet the 30 percent requirement. This requires recipients to continue hiring Section 3 residents when employment opportunities are available.

### **How can businesses and low income persons find out more about Section 3?**

Contact the Fair Housing and Equal Opportunity representative at your nearest HUD Field Office or the HUD Community Builder.

### **What if it appears an entity is not complying with Section 3?**

There is a complaint process. Section 3 residents, businesses, or a representative for either may file complaints if they believe a violation of Section 3 requirements has occurred where a HUD-funded project is planned or underway. Complaints will be investigated; if appropriate, voluntary resolutions will be sought. A complaint that cannot be resolved voluntarily may result in an administrative hearing.

### **Will HUD require compliance?**

Yes. HUD receives annual reports from recipients, monitors the performance of contractors and investigates complaints. HUD examines employment and contract records for evidence of actions taken to train and employ Section 3 residents and to award contracts to Section 3 businesses.

### **How can businesses or residents pursue an alleged violation of Section 3?**

You can file a written complaint with the **local HUD Field Office** or mail it to:

The Assistant Secretary for Fair Housing and Equal Opportunity  
ATTN: Office of Economic Opportunity  
U.S. Department of housing and Urban Development  
451 Seventh Street, S.W.,  
Room 5100  
Washington, D.C. 20410-2000

A written complaint should contain:

- Name and address of the person filing the complaint
- Name and address of subject of complaint (HUD recipient, contractor or subcontractor)
- Description of acts or omissions in alleged violation of Section 3
- Statement of corrective action sought i.e. training, employment or contracts

## **Section 3 Office (Kansas City, MO)**

The Section 3 Division is located in the Historic Lincoln Building, in the 18th and Vine District, 1601 E. 18th St., Suite 200, Kansas City, MO 64108. The **Section 3 Office** serves to regulate the City's federal requirements related to the **Section 3 HUD Act of 1968**, as amended. That acts intends to foster local and neighborhood economic development and to increase individual self-sufficiency. The Section 3 Office certifies businesses and individuals as Section 3 Business Enterprises or Section 3 Workers.

The City of Kansas City Missouri is responsible for administering more than \$9 million in Section 3 covered Community Development Block Grant (CDBG) funding. In 2006, Kansas City was the subject of a Section 3 Compliance Review, which resulted in a number of findings of noncompliance. Accordingly, Kansas City made Section 3 compliance a priority by creating an Office of Section 3 Administration with its own Section 3 Coordinator.

This office works closely with the city's Contract Compliance Division, Office of Community Development, and potential Section 3 residents/ contractors. As a result, the city has developed aggressive and innovative strategies for complying with the requirements of Section 3 and has exceeded the numerical goals for contracting and employment opportunities found at 24 CFR § 135.30.

For more information please contact Sandra Walker.

(816) 513-6817 or (816) 513-6819

Sec. 134.38 Section 3 clause.

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

- 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

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part 135, and agree 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 regulations, 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).

**I. Examples of Efforts To Offer Training and Employment Opportunities to Section 3 Residents**

- (1) Entering into “first source” hiring agreements with organizations representing Section 3 residents.
- (2) Sponsoring a HUD-certified “step-up” employment and training program for Section 3 residents.
- (3) Establishing training programs, which are consistent with the requirements of the Department of Labor, for public and Indian housing residents and other Section 3 residents in the building trades.
- (4) Advertising the training and employment positions by distributing flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) to every occupied dwelling unit in the housing development or developments where category 1 or category 2 persons (as these terms are defined in Sec. 134.34) reside.
- (5) Advertising the training and employment positions by posting flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) in the common areas or other prominent areas of the housing development or developments where category 1 or category 2 persons reside; for all other recipients, post such advertising in the housing development or developments and transitional housing in the neighborhood or service area of the Section 3 covered project.
- (6) Contacting resident councils, resident management corporations, or other resident organizations, where they exist, in the housing development or developments where category 1 or category 2 persons reside, and community organizations in HUD-assisted neighborhoods, to request the assistance of these organizations in notifying residents of the training and employment positions to be filled.
- (7) Sponsoring (scheduling, advertising, financing or providing in-kind services) a job informational meeting to be conducted by an HA or contractor representative or representatives at a location in the housing development or developments where category 1 or category 2 persons reside or in the neighborhood or service area of the Section 3 covered project.
- (8) Arranging assistance in conducting job interviews and completing job applications for residents of the housing development or developments where category 1 or category 2 persons reside and in the neighborhood or service area in which a Section 3 project is located.

- (9) Arranging for a location in the housing development or developments where category 1 persons reside, or the neighborhood or service area of the project, where job applications may be delivered to and collected by a recipient or contractor representative or representatives.
- (10) Conducting job interviews at the housing development or developments where category 1 or category 2 persons reside, or at a location within the neighborhood or service area of the Section 3 covered project.
- (11) Contacting agencies administering HUD Youthbuild programs, and requesting their assistance in recruiting HUD Youthbuild program participants for the HA's or contractor's training and employment positions.
- (12) Consulting with State and local agencies administering training programs funded through JTPA or JOBS, probation and parole agencies, unemployment compensation programs, community organizations and other officials or organizations to assist with recruiting Section 3 residents for the HA's or contractor's training and employment positions.
- (13) Advertising the jobs to be filled through the local media, such as community television networks, newspapers or general circulation, and radio advertising.
- (14) Employing a job coordinator, or contracting with a business concern that is licensed in the field of job placement (preferably one of the Section 3 business concerns identified in part 135), that will undertake, on behalf of the HA, other recipient or contractor, the efforts to match eligible and qualified Section 3 residents with the training and employment positions that the HA or contractor intends to fill.
- (15) For an HA, employing Section 3 residents directly on either a permanent or a temporary basis to perform work generated by Section 3 assistance. (This type of employment is referred to as "force account labor" in HUD's Indian Housing regulations. See 24 CFR 905.102, and Sec. 905.201(a)(6).)
- (16) Where there are more qualified Section 3 residents than there are positions to be filled, maintaining a file of eligible qualified Section 3 residents for future employment positions.
- (17) Undertaking job counseling, education and related programs in association with local educational institutions.
- (18) Undertaking such continued job training efforts as may be necessary to ensure the continued employment of Section 3 residents previously hired for employment opportunities.
- (19) After selection of bidders but prior to execution of contracts, incorporating into the contract a negotiated provision for a specific number of public housing or other Section 3 residents to be trained or employed on the Section 3 covered assistance.
- (20) Coordinating plans and implementation of economic development (e.g., job training and preparation, business development assistance for residents) with the planning for housing and community development.

## **II. Examples of Efforts To Award Contracts to Section 3 Business Concerns**

- (1) Utilizing procurement procedures for Section 3 business concerns similar to those provided in 24 CFR part 905 for business concerns owned by Native Americans (see section III of this Appendix).
- (2) In determining the responsibility of potential contractors, consider their record of Section 3 compliance as evidenced by past actions and their current plans for the pending contract.
- (3) Contacting business assistance agencies, minority contractors associations and community organizations to inform them of contracting opportunities and requesting their assistance in identifying Section 3 businesses which may solicit bids or proposals for contracts for work in connection with Section 3 covered assistance.
- (4) Advertising contracting opportunities by posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the common areas or other prominent areas of the housing development or developments owned and managed by the HA.
- (5) For HAs, contacting resident councils, resident management corporations, or other resident organizations, where they exist, and requesting their assistance in identifying category 1 and category 2 business concerns.
- (6) Providing written notice to all known Section 3 business concerns of the contracting opportunities. This notice should be in sufficient time to allow the Section 3 business concerns to respond to the bid invitations or request for proposals.
- (7) Following up with Section 3 business concerns that have expressed interest in the contracting opportunities by contacting them to provide additional information on the contracting opportunities.
- (8) Coordinating pre-bid meetings at which Section 3 business concerns could be informed of upcoming contracting and subcontracting opportunities.
- (9) Carrying out workshops on contracting procedures and specific contract opportunities in a timely manner so that Section 3 business concerns can take advantage of upcoming contracting opportunities, with such information being made available in languages other than English where appropriate.  
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- (10) Advising Section 3 business concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.
- (11) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of Section 3 business concerns.
- (12) Where appropriate, breaking out contract work items into economically feasible units to facilitate participation by Section 3 business concerns.

- (13) Contacting agencies administering HUD Youthbuild programs, and notifying these agencies of the contracting opportunities.
- (14) Advertising the contracting opportunities through trade association papers and newsletters, and through the local media, such as community television networks, newspapers of general circulation, and radio advertising.
- (15) Developing a list of eligible Section 3 business concerns.
- (16) For Has, participating in the "Contracting with Resident-Owned Business" program provided under 24 CFR part 963.
- (17) Establishing or sponsoring programs designed to assist residents of public or Indian housing in the creation and development of resident-owned businesses.
- (18) Establishing numerical goals (number of awards and dollar amount of contracts) for award of contracts to Section 3 business concerns.
- (19) Supporting businesses which provide economic opportunities to low income persons by linking them to the support services available through the Small Business Administration (SBA), the Department of Commerce and comparable agencies at the State and local levels.
- (20) Encouraging financial institutions, in carrying out their responsibilities under the Community Reinvestment Act, to provide no or low interest loans for providing working capital and other financial business needs.
- (21) Actively supporting joint ventures with Section 3 business concerns.
- (22) Actively supporting the development or maintenance of business incubators which assist Section 3 business concerns.

### **III. Examples of Procurement Procedures That Provide for Preference for Section 3 Business Concerns**

This Section III provides specific procedures that may be followed by recipients and contractors (collectively, referred to as the “contracting party”) for implementing the Section 3 contracting preference for each of the competitive procurement methods authorized in 24 CFR 85.36(d).

- (1) Small Purchase Procedures. For Section 3 covered contracts aggregating no more than \$25,000, the methods set forth in this paragraph (1) or the more formal procedures set forth in paragraphs (2) and (3) of this Section III may be utilized.
  - (i) Solicitation. (A) Quotations may be solicited by telephone, letter or other informal procedure provided that the manner of solicitation provides for participation by a reasonable number of competitive sources. At the time of solicitation, the parties must be informed of:
    - the Section 3 covered contract to be awarded with sufficient specificity;
    - the time within which quotations must be submitted; and
    - the information that must be submitted with each quotation.
  - (B) If the method described in paragraph (i) (A) is utilized, there must be an attempt to obtain quotations from a minimum of three qualified sources in order to promote competition. Fewer than three quotations are acceptable when the contracting party has attempted, but has been unable, to obtain a sufficient number of competitive quotations. In unusual circumstances, the contracting party may accept the sole quotation received in response to a solicitation provided the price is reasonable. In all cases, the contracting party shall document the circumstances when is has been unable to obtain at least three quotations.
  - (ii) Award. (A) Where the Section 3 covered contract is to be awarded based upon the lowest price, the contract shall be awarded to the qualified Section 3 business concern with the lowest responsive quotation, if it is reasonable and no more than 10 percent higher than the quotation of the lowest responsive quotation from any qualified source, the award shall be made to the source with the lowest quotation. (B) Where the Section 3 covered contract is to be awarded based on factors other than price, a request for quotations shall be issued by developing the particulars of the solicitation, including a rating system for the assignment of points to evaluate the merits of each quotation. The solicitation shall identify all factors to be considered, including price or cost. The rating system shall provide for a range of 15 to 25 percent of the total number of available rating points to be set aside for the provision of preference for Section 3 business concerns. The purchase order shall be awarded to the responsible firm whose quotation is the most advantageous, considering price and all other factors specified in the rating system.



(2) Procurement by sealed bids (Invitation for Bids). Preference in the award of Section 3 covered contracts that are awarded under a sealed bid (IFB) process may be provided as follows:

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(i) Bids shall be solicited from all businesses (Section 3 business concerns, and non-Section 3 business concerns). An award shall be made to the qualified Section 3 business concern with the highest priority ranking and with the lowest responsive bid if that bid --

(A) Is within the maximum total contract price established in the contracting party's budget for the specific project for which bids are being taken, and

(B) Is not more than "X" higher than the total bid price of the lowest responsive bid from any responsible bidder. "X" is determined as follows:

---

X = lesser of:

---

When the lowest responsive bid is less than \$100,000.

10% of that bid or \$9,000

When the lowest responsive bid is:

At least \$100,000, but less than \$200,000

9% of that bid, or \$16,000

At least \$200,000, but less than \$300,000

8% of that bid, or \$21,000

At least \$300,000, but less than \$400,000

7% of that bid, or \$24,000

At least \$400,000, but less than \$500,000

6% of that bid, or \$25,000

At least \$500,000, but less than \$1 million

5% of that bid, or \$40,000

At least \$1 million, but less than \$2 million

4% of that bid, or \$60,000

At least \$2 million, but less than \$4 million

3% of that bid, or \$80,000

At least \$4 million, but less than \$7 million

2% of that bid, or \$105,000

\$7 million or more -----

1 ½ % of the lowest responsive bid, with no dollar limit.

---

(ii) If no responsive bid by a Section 3 business concern meets the requirements of paragraph (2)(i) of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

(3) Procurement under the competitive proposals method of procurement (Request for Proposals (RFP)). (i) For contracts and subcontracts awarded under the competitive proposals method of procurement (24 CFR 85.36(d)(3)), a Request for Proposals (RFP) shall identify all evaluation factors (and their relative importance ) to be used to rate proposals.

(ii) One of the evaluation factors shall address both the preference for Section 3 business concerns and the acceptability of the strategy for meeting the greatest extent feasible requirement (Section 3 strategy), as disclosed in proposals submitted by all business concerns (Section 3 and non-Section 3 business concerns). This factor shall provide for a range of 15 to 25 percent of the total number of available points to be set aside for the evaluation of these two components.

(iii) The component of this evaluation factor designed to address the preference for Section 3 business concerns must establish a preference for these business concerns in the order of priority ranking as described in 24 CFR 135.36.

(iv) With respect to the second component (the acceptability of the Section 3 strategy), the FRP shall require the disclosure of the contractor's Section 3 strategy to comply with the section 3 training and employment preference, or contracting preference, or both, if applicable. A determination of the contractor's responsibility will include the submission of an acceptable Section 3 strategy. The contract award shall be made to the responsible firm (either Section 3 or non-Section 3 business concern) whose proposal is determined most advantageous, considering price and all other factors specified in the RFP.

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

**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 —

HAKC - Office of Procurement & Contracts  
301 E. Armour Blvd. – Suite #250  
Kansas City, MO 64111

[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 [X] 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.

# 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 filled 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 [ ] 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)

- |   |   |
|---|---|
| <input type="checkbox"/> Black Americans    | <input type="checkbox"/> Asian Pacific Americans  |
| <input type="checkbox"/> Hispanic Americans | <input type="checkbox"/> Asian Indian Americans   |
| <input type="checkbox"/> Native Americans   | <input type="checkbox"/> 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, 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 Non-segregated 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)

# 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)

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**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 \$2,000,000.00 per occurrence to protect the Contractor and each subcontractor against claims for bodily injury or death and damage to the property of others. This shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under (3) below. If the Contractor has a "claims-made" policy, then the following additional requirements apply: the policy must provide a "retroactive date" which must be on or before the execution date of the Contract; and the extended reporting period may not be less than five years following the completion date of the Contract.
  - (3) Automobile Liability on owned and non-owned motor vehicles used on the site(s) or in connection therewith for a combined single limit for bodily injury and property damage of not less than \$(See Section 8 of IFB/RFP) 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 super-structure is started. It need not be carried on landscape work. Policies shall furnish coverage at all times for the full cash value of all completed construction, as well as materials in place and/or stored at the site(s), whether or not partial payment has been made by the 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 an 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 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 29CFR 5.12(a)a).

(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.

CONTRACT FOR CONSTRUCTION SERVICES

AGREEMENT BETWEEN THE HOUSING AUTHORITY OF KANSAS CITY, MISSOURI  
AND CONTRACTOR

**THIS AGREEMENT** made this \_\_\_\_\_,

**BETWEEN** THE HOUSING AUTHORITY OF KANSAS CITY, MISSOURI (HAKC), a Missouri Municipal Corporation, principal office located at 920 Main Street, Suite 701, Kansas City, Missouri, 64105

and the Contractor:

\_\_\_\_\_

for the following Project: **Contract #** \_\_\_\_\_

\_\_\_\_\_

HAKC and the Contractor agree as set forth below.

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## Article 1. Definitions

- 1.1 *"Acceptance"* means the issuance of a Certificate of Substantial Completion.
- 1.2 *"Agreement"* and *"Contract"* mean all items incorporated in Article 49, as component parts of this Contract for Construction Services. The words *"Agreement"* and *"Contract"* also include all formal changes made in writing in accordance with the procedures established herein.
- 1.3 *"Architect"* means the architect that may be hired by HAKC to perform the architectural and other services on behalf of HAKC according to the agreement entered into between the architect and HAKC.
- 1.4 *"Calendar Day"* means a twenty-four hour period of time that includes weekdays, weekends and federal holidays.
- 1.5 *"Complete" and "Completion"* shall have the same meaning as the term *"Final Completion"* except when such terms are modified by the words *"partial,"* or *"substantial,"* or another meaning is undisputedly intended, as evidenced by the context or usage of such terms.
- 1.6 *"Contract Price"* and similar terms (including, but not limited to, *Contract Sum* and *Agreement Price*), mean the total sum of money that HAKC agrees to pay, and Contractor agrees to accept as payment, for the performance of this Agreement, pursuant to Paragraph 27.1.
- 1.7 *"Contract Time" and "Contract Period"* means the time required for performance of the Work stated in Article 25, *Contract Period*.
- 1.8 *"Contracting Officer"* means the person delegated the authority by HAKC 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 HAKC in all dealings with the Contractor.
- 1.9 *"Day"* means a *Calendar Day*.
- 1.10 *"Drawings"* means the graphic and pictorial documents, prepared or approved by HAKC's Project Manager or Architect, if applicable, showing the design, location and dimensions of the Work, generally including plans, elevations, sections details, schedules and diagrams.
- 1.11 *"Final Acceptance"* means the issuance by the Project Manager of the Certificate of Final Completion.
- 1.12 *"Final Completion"* means the condition of the Work on the date the Project Manager issues the Certificate of Final Completion.
- 1.13 *"General Conditions"* means the General Conditions of the Contract for Construction form HUD-5370.
- 1.14 *"HAKC"* means the Housing Authority of Kansas City, Missouri, a Missouri municipal corporation created pursuant to R.S.Mo. § 99.040.
- 1.15 *"HAKC Residents"* means individuals who reside at a housing project owned by HAKC.
- 1.16 *"Minority Business"* means a business which is at least fifty-one percent (51%) owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least fifty-one percent (51%) of the voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority Group members include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.
- 1.17 *"Owner"* means the Housing Authority of Kansas City, Missouri, a Missouri municipal corporation created pursuant to R.S.Mo. § 99.040.
- 1.18 *"PHA/IHA"* means the Housing Authority of Kansas City, Missouri, a Missouri municipal corporation created

pursuant to R.S.Mo. § 99.040.

1.19 *"Project Manager"* means the person designated by HAKC to monitor and enforce the terms and conditions of the contract documents and exercise such authority as stated in this Agreement.

1.20 *"Specifications"* means the documents prepared by the HAKC's Project Manager or Architect, if applicable, consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

1.21 *"Subcontract"* means any contract, purchase order or other 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 this Agreement.

1.22 *"Subcontractor"* means any supplier, vendor, firm, entity, or individual that furnishes supplies, materials, equipment or services to or for the Contractor or another Subcontractor.

1.23 *"Substantially Complete"* describes the condition of Work when all the Work, or a portion of the Work designated by the Project Manager, is sufficiently completed in accordance with this Agreement, so that such Work can be utilized for its intended purposes. No Work shall be deemed Substantially Complete until the Contractor satisfies all requirements for demonstration and instruction regarding operation and maintenance procedures with respect to such Work.

1.24 *"Women's Business Enterprise"* means a business that is at least fifty-one percent (51%) owned by a woman or women who are U.S. citizens and who also control or operate the business.

1.25 *"Work"* includes all construction and services required by the Specifications, Drawings, and this Agreement, and all component parts listed in Article 49.4.A, whether completed or partially completed, including all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations.

1.26 *"Work Day"* means a twenty-four hour period of time, that includes Saturdays, Sundays, and federal holidays.

1.27 *"Work Site"* means the location designated by the Contracting Officer where the Work is to be performed.

## **Article 2. Contractor's Responsibility for Work**

### **2.1 GENERAL RESPONSIBILITIES**

2.1.A. *Compliance & Business Judgment:* The Contractor shall perform all Work in compliance with this Agreement. The Contractor shall exercise sound business judgment and use its best skill and attention when performing the Work.

2.1.B. *Supervision & Coordination:* The Contractor shall supervise, coordinate and direct the Work. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Agreement, unless expressly stated otherwise in this Agreement.

2.1.C. *Architect & Contracting Officer:* The Contractor shall not be relieved of its obligations to perform the Work in accordance with this Agreement by performance of the duties of the Architect, Contracting Officer or any duly authorized representative of HAKC, or by tests, inspections, approvals or certifications required or performed by persons other than the Contractor. The Contracting Officer may delegate its authority and obligations. The Contractor shall submit to the Contracting Officer and the HAKC's Project Manager or Architect, if applicable, such documentation as requested by the Contracting Officer or the HAKC's Project Manager or Architect, if applicable, to assist in the administration of construction.

2.2 *EMPLOYEES & SUBCONTRACTORS:* Contractor shall be responsible for the conduct and discipline of its employees and Subcontractors. All workmen shall have sufficient knowledge, skill, and experience to perform properly the Work assigned to them. Any workman who does not perform his Work in a skillful manner, appears to be incompetent, or acts in a disorderly or intemperate manner, shall be removed from the Work site by the Contractor's superintendent at the request of the Project Manager or Architect if applicable. Such

removal is not cause for an extension of time in which to complete the Work.

### 2.3 *CONTRACTOR'S USE OF THE WORK SITE*

2.3.A. *Architect's Instructions:* The Contractor shall limit its use of the Work Site in accordance with the written instructions of the Project Manager and the Architect if applicable. When the Contractor is not performing Work in a particular area of the Work Site, the Contractor shall take reasonable measures, including the removal of equipment and materials, to permit use of such areas by HAKC, HAKC Residents and the public.

2.3.B. *Roads, Entrances & Storage:* The Contractor shall not block public roads or entrances to the Work Site. Public roads and entrances to the Work Site shall not be used for storage of materials or parking by the Contractor or Subcontractors.

2.3.C. *Material Storage:* The Contractor shall coordinate the Work and deliveries to minimize the amount of materials and equipment stored at the Work Site. The Contractor shall receive, store, and handle products, materials and equipment in a manner which will prevent loss, deterioration and damage.

2.3.D. *Vacant Buildings:* The Contractor shall not use existing vacant buildings on the Work Site without prior written consent of the Contracting Officer.

2.4 *INDEPENDENT CONTRACTOR:* The Contractor is acting at all times as an independent contractor. Neither the conduct of the parties nor any provision of this Agreement shall create a master-servant relationship between HAKC and the Contractor.

### **Article 3. Architect's Duties, Responsibilities, and Authority**

*See*, Article 3, General Conditions of the Contract for Construction HUD form 5370.

### **Article 4. Other Contracts**

*See* Article 4, General Conditions of the Contract for Construction HUD form 5370.

### **Article 5. Preconstruction Conference and Notice to Proceed**

*See* Article 5, General Conditions of the Contract for Construction HUD form 5370.

### **Article 6. Construction Progress Schedule, Progress Reports and Progress Meetings**

In the event the contract price meets or exceeds \$100,000.00 Section 6.1, including 6.1.A, 6.1.B, 6.1.C, 6.1.D, and 6.1.E., shall apply.

#### 6.1 *CPM PROGRESS SCHEDULE:*

6.1.A. *Content of CPM Schedule:* Contractor shall prepare a detailed construction progress schedule covering all aspects of the Work. The construction progress schedule shall employ the Critical Path Method ("CPM") for presentation and analysis of the Work. The CPM Progress Schedule shall:

- (1) provide a detailed, graphic representation of activities and events that will occur during performance of the Work;
- (2) identify each phase of construction and occupancy;
- (3) identify dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the Contract Documents;
- (4) indicate graphically the critical path of Work sequences necessary for completion of related portions of the Work;
- (5) display the relationship of the Work to other activities, such as scheduled occupancy by HAKC or

other contractors' work;

- (6) establish start dates and completion dates of distinct aspects of the Work;
- (7) display projected costs of construction activities in a manner consistent with the Contractor's Price Breakdown;
- (8) indicate the estimated percentage of completion of Work activities in ten percent (10%) increments;
- (9) reflect the time required for the preparation and processing of Shop Drawings and submittals;
- (10) reflect the time required for procurement of manufactured or processed materials and equipment;
- (11) reflect time required for inspections and certifications; and,
- (12) additional information requested by the Architect or the Contracting Officer or any duly authorized representative of HAKC.

6.1.B. *Submission & Approval of CPM Schedule:* The Contractor shall submit its proposed CPM Progress Schedule to the Architect, if applicable, and Project Manager within fifteen (15) days after issuance of the Notice to Proceed. After receipt of the proposed CPM Progress Schedule, the Architect, if applicable, and the Project Manager shall either approve the schedule or notify the Contractor of required modifications. If modifications are required, the Contractor shall modify and resubmit the CPM Progress Schedule, in a form satisfactory to the Architect, if applicable, and the Project Manager, within ten (10) days after receiving notice of such modifications.

6.1.C. *Updating CPM Schedule:* The Contractor shall update the CPM Progress Schedule on the last day of every calendar month during which Work is performed. The Contractor shall update all aspects of the CPM Progress Schedule, including: (1) the percentage of Work complete, (2) changes in actual or proposed activity durations, (3) projected future start and completion dates, (4) delays affecting the Work, (5) the correlation of actual costs and projected costs, and (6) additional information requested by the Project Manager or Architect, if applicable, or any duly authorized representative of HAKC. Updated versions of the CPM Progress schedule shall display all information contained in the original version of the CPM Progress Schedule (*i.e.*, the first version of the CPM Progress Schedule approved by the Project Manager or Architect, if applicable, and the Contracting Officer). As part of the monthly updating process, the Contractor shall prepare a narrative progress report describing the physical progress during the previous thirty (30) days, the Contractor's plans for the next thirty (30) days. The narrative portion of the report shall also describe potential delays and problems, and their expected impact on projected completion dates. The Contractor shall submit updated versions of the CPM Progress Schedule with each Application for Payment.

6.1.D. *CPM Schedule to Subcontractors:* The Contractor shall submit copies of the CPM Progress Schedule and all revisions thereto, to all Subcontractors.

6.1.E. *Compliance with CPM Schedule:* The Contractor shall perform the Work in compliance with the original version of the CPM Progress Schedule (*i.e.*, the first version of the CPM Progress Schedule approved by the Architect, if applicable, and the Project Manager). The Contractor shall monitor the Work's progress and notify the Architect if applicable and the Project Manager in writing of any deviations from the original version of the CPM Progress Schedule. If the Architect, if applicable, and/or the Project Manager determines the Work has not reached the level of completion required by the original version of the CPM Progress Schedule, the Architect, if applicable, and/or the Project Manager may require the Contractor to take corrective measures necessary to expedite the progress of the Work, including, without limitation: (1) working additional shifts or overtime; and, (2) supplying additional manpower, equipment, and facilities (hereinafter referred to collectively as "Extraordinary Measures"). The rights of the Architect, if applicable, and Project Manager to require Extraordinary Measures are solely for the purpose of ensuring the Contractor's compliance with this Agreement. The Contractor shall not receive an adjustment to the Contract Price in connection with Extraordinary Measures required pursuant to this Article.

## 6.2 **Article 6. Construction Progress Schedule**

*See* Article 6. (a), (b), and (c) General Conditions of the Contract for Construction HUD form 5370.

6.3 *DAILY PROGRESS REPORTS:*

6.3.A. *Preparation & Submission:* The Contractor shall prepare and maintain a daily record of construction progress activities ("Daily Progress Reports"). The Contractor shall deliver Daily Progress Reports to the Architect, if applicable and Project Manager once per week, during every week in which Work is performed.

6.3.B. *Form & Handwriting:* The Daily Progress Reports shall be prepared on a standard form, acceptable to the Architect, and/or Project Manager and shall contain legible handwriting. If the Architect, and/or Project Manager determine that handwriting on a Daily Progress Report is not legible, the Architect and/or the Project Manager may require the Contractor to type subsequent Daily Progress Reports.

6.3.C *Contents:* The Contractor shall indicate the following on Daily Progress Reports:

- (1) Subcontractors at the Work Site;
- (2) approximate number of personnel at the Work Site;
- (3) meetings and significant decisions;
- (4) accidents and unusual events;
- (5) Work stoppages and delays, and the causes of such events;
- (6) emergency procedures;
- (7) shortages or losses of materials or Work;
- (8) Change Orders issued or implemented;
- (9) anticipated delays, and the anticipated causes of such delays;
- (10) orders and requests of government authorities;
- (11) inspections and tests performed, or expected to be performed within the next week;
- (12) utility services connected or disconnected;
- (13) equipment or system tests and startups;
- (14) meter readings and similar recordings;
- (15) safety precautions or actions taken;
- (16) general weather conditions, including the high and low temperatures; and,
- (17) additional information requested by the Architect, if applicable, Project Manager or other duly authorized representative of HAKC.

6.4 *PROGRESS MEETINGS:*

6.4.A. *Time & Attendance:* HAKC may schedule Progress Meetings during the first and third week of every calendar month during which Work is performed. The Contractor shall attend such Progress Meetings. The Contract shall require its Subcontractors to attend such meetings at HAKC's request.

6.4.B. *Agenda & Minutes:* The Architect, if applicable or Project Manager shall prepare an agenda for Progress Meetings, identifying topics such as the progress of the Work and compliance with this Agreement. The Architect, if applicable or Project Manager shall preside at Progress Meetings. The Architect, if applicable or Project Manager shall record minutes of Progress Meetings and distribute the minutes to parties that attended such meetings.

**Article 7. Site Investigation and Conditions Affecting the Work**

7.1 *GRADES & DIMENSIONS:* The exactness of grades, elevations, dimensions, or locations given on any Specification or Drawing issued by the Architect and/or the Project Manager or work installed by other contractors, is not guaranteed by HAKC. The Contractor shall satisfy itself as to the accuracy of all grades, elevations, dimensions and locations. In all cases of interconnection of the Contractor's Work with existing or other work, the Contractor shall verify all

7.2 *FIELD MEASUREMENTS:* The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions with the Specifications and Drawings before commencing construction activities.

7.3 *ERRORS IN SPECS OR DRAWINGS:* Before commencing construction activities, the Contractor shall submit

a written report to the Architect, if applicable, and/or the Project Manager and the Contracting Officer of any errors, inconsistencies or omissions in any Specification or Drawing.

#### **Article 8. Differing Site Conditions**

*See* Article 8, General Conditions of the Contract for Construction HUD form 5370.

#### **Article 9. Specifications and Drawings for Constructions**

*See* Article 9, General Conditions of the Contract for Construction HUD form 5370.

#### **Article 10. As-Built Drawings**

*See* Article 10, General Conditions of the Contract for Construction HUD form 5370.

#### **Article 11. Material and Workmanship**

*See* Article 11, General Conditions of the Contract for Construction HUD form 5370.

#### **Article 12. Permits and Codes**

12.1 *OCCUPATIONAL LICENSES*: Before issuance of the Notice to Proceed, the Contractor shall submit evidence to the Contracting Officer or other duly authorized representative of HAKC of the Contractor's current Kansas City, Missouri, Occupational License to do business in Kansas City, Missouri. Before submitting its first Application for Payment, the Contractor shall ensure that all Subcontractors possess current Kansas City, Missouri, Occupational Licenses to do business in Kansas City, Missouri.

12.2 *APPLICABLE LAWS & REGULATIONS*: The Contractor shall comply with all applicable laws, ordinances, codes, rules, and regulations, including, but not limited to Hours and Safety Standards Act, 40 U.S.C. 327, *et seq.* (as supplemented by 29 CFR 5); (B) Anti-Kickback Act, 18 U.S.C. 874, *et seq.* (as supplemented by 29 CFR 3); (C) Conduct and Qualifications regulations found at 24 CFR 85; and, (D) Chapter 290, Wages, Hours and Dismissal Rights, of the Revised Statutes of Missouri, to the extent that such Chapter is not preempted by federal law. The Contractor shall satisfy and comply with applicable HAKC and HUD requirements, regulations and policies.

#### **Article 13. Health, Safety, and Accident Prevention**

13.1 *BARRICADES & FENCING*: The Contractor is responsible for providing adequate barricades or fencing at the Work Site and limiting ingress and egress so as to provide adequate warning to, and prevent injury of, third parties.

13.2 *THEFT, VANDALISM & PHYSICAL HARM*: The Contractor shall take appropriate measures to ensure the security of the Work Site. Such security measures shall protect against theft, vandalism and destruction of the Work, equipment, materials and personal property on the Work site. The Contractor shall take reasonable security measures to protect the Contractor's employees, Subcontractors' employees and all other individuals present on the Work Site from assault, battery and other physical harm.

13.3 *SAFETY PROGRAM*: Before commencing construction, the Contractor shall design a safety program, and submit a copy of such program to the Architect, if applicable, and the Project Manager. This program shall indicate the Contractor's plan to comply with OSHA and HAZCOM requirements applicable to this Agreement and the Work. The Contractor shall appoint a safety representative on site. The Contractor shall comply with the American Standard Safety Code. The Contractor shall have on site at all times a binder containing Material Safety Data Sheets. The Contractor shall post an outline of the safety program and the name of the safety representative at the Work Site. The Contractor shall implement its safety program throughout the performance of the Work. HAKC and the Architect, if applicable, shall not be responsible for implementation of safety measures.

13.4 *LOCAL SAFETY REQUIREMENTS*: The Contractor shall provide any and all measures of protection required by the City of Kansas City, Missouri, for the protection of the public and employees during excavation operations, if any, and performance of the Work. Such safety measures shall include, but shall not be limited to, protection of sidewalks, and placement of barricades, warning lights and signs.



#### **Article 14. Temporary Heating**

14.1 *PERMANENT EQUIPMENT*: Before operating permanent equipment for temporary equipment is properly installed, lubricated, and equipped with filters. The Contractor shall provide and pay for operation, maintenance, and regular replacement of filters and worn or consumed parts of such equipment. The Contractor shall replace all filters before transferring possession of permanent heating equipment to HAKC.

#### **Article 15. Availability and Use of Utility Services**

15.1 *UTILITY ACTIVATION & DEACTIVATION*: Before beginning the Work, Contractor shall ensure that appropriate utilities have been deactivated. The Contractor shall be solely responsible for the activation and deactivation of utilities on the Work Site. Contractor shall indemnify HAKC for any and all liability incurred by HAKC, including attorneys' fees, resulting from the Contractor's failure to properly activate or deactivate utilities.

15.2 *UTILITY SCHEDULE & EASEMENTS*: The Contractor shall prepare a schedule indicating dates of activation and termination of each temporary utility. The Contractor shall obtain easements necessary for the acquisition of temporary utilities, if HAKC does not own easements that can be used for that purpose.

15.3 *UTILITY INSPECTIONS & PERMITS*: The Contractor shall obtain appropriate Inspections, Tests, permits and certifications of appropriate public authorities before activating any temporary utility.

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

16.1 *NOTICE OF UTILITY DEACTIVATION*: Contractor shall obtain approval from the Project Manager and the Architect, if applicable, forty-eight (48) hours before deactivating any utilities in occupied or existing facilities.

#### **Article 17. Temporary Buildings and Transportation of Materials**

*See* Article 17, General Conditions of the Contract for Construction HUD form 5370.

#### **Article 18. Clean Air and Water**

18.1. *AIRBORNE DIRT*: If requested by the Architect and/or Project Manager the Contractor shall take necessary measures to limit the amount of airborne dirt and dust.

#### **Article 19. Energy Efficiency**

*See* Article 19, General Conditions of the Contract for Construction HUD form 5370.

#### **Article 20. Inspection and Acceptance of Construction**

20.1 *INSPECTION & TEST ASSISTANCE*: The Contractor shall cooperate with all individuals performing Inspections or Tests, and shall provide access to the Work. The Contractor shall: (1) furnish incidental labor and facilities to facilitate such Inspections or Tests; (2) obtain quantities of samples of materials to be tested; (3) provide facilities for storage and curing of test samples; (4) deliver samples to testing laboratories; (5) provide security and protection of samples and test equipment at the Work Site; and, (6) provide other services reasonably related to the performance of Inspections and Tests.

20.2 *INSPECTION & TEST COORDINATION*: The Contractor shall coordinate the Work with Inspections and Tests to avoid delays in the Work and prevent disassembly or uncovering of completed Work.

20.3 *LIST OF NONCONFORMING WORK*: When the Contractor believes that all Work is complete, the Contractor shall conduct a thorough inspection of the Work to identify and prepare a written list of all unfinished Work and all Work that otherwise fails to comply with the Specifications, Drawings or any aspect of this Agreement ("List of Unfinished and Nonconforming Work"). The Contractor shall submit its list of Unfinished and Nonconforming Work to the Architect, if applicable, the Project Manager, and any Subcontractors that may be required to perform or correct such Work.

- 20.4 *SUBSTANTIAL COMPLETION APP.:* After completion and correction of all Work identified on the List of Unfinished and Nonconforming Work, the Contractor shall submit to the Architect, if applicable, and the Project Manager a written Application for Certification of Substantial Completion, containing a notarized statement that: (1) the governing codes administration authorities have approved each building; and, (2) the Contractor has obtained certificates of occupancy for each building from appropriate public agencies.
- 20.5 *SUBSTANTIAL COMPLETION CERT.:* Within ten (10) days after receiving the Contractor's Application for Certification of Substantial Completion, the Architect, if applicable, and the Project Manager shall review the Work and identify any remaining unfinished or nonconforming Work. If the Architect, if applicable and the Project Manager agree that the Work is Substantially Complete, they shall issue a Certificate of Substantial Completion, along with a punch list that describes any remaining unfinished or nonconforming Work. If the Architect or the Project Manager determines that the Work is unfinished or nonconforming Work, and submit another Application for Certification of Substantial Completion. The Contractor shall pay all costs associated with the Contractor's second, and subsequent, Applications for Certification of Substantial Completion.
- 20.6 *PARTIAL SUBSTANTIAL COMPLETION:* The Project Manager may, in his/her sole discretion, certify less than all of the Work as Substantially Complete. The Project Manager may require the Contractor to prepare and submit a List of Unfinished and Nonconforming Work for any designated portion of the Work. When the Contractor has performed all of the Work identified on such list, the Contractor shall submit to the Architect, if applicable, and the Project Manager an Application for Certification of Substantial Completion for the designated portion of the Work, containing a notarized statement that: (1) the governing codes administration authorities have approved each building, if applicable, for the designated portion of the Work; and, (2) the Contractor has obtained certificates of occupancy for each building on the designated portion of the Work. If the Architect and/or the Project Manager agree that the designated portion of the Work is complete, they may issue a Certificate of Substantial Completion that identifies the substantially completed portion of the Work. A Certificate of Final Completion shall not be issued for less than all of the Work.
- 20.7 *FINAL COMPLETION APPLICATION:* After performing all Work required by the punch list, the Contractor shall submit to the Architect, if applicable, and the Project Manager a written Application for Certification of Final Completion, that includes a notarized statement that: (1) the Contractor has completed all Work in compliance with the Specifications, Drawings and this Agreement; and, (2) the Work is free from violations of federal, state and local environmental laws, regulations and ordinances, and that all Work meets or exceeds current industry standards.
- 20.8 *FINAL COMPLETION CERTIFICATION:* Within ten (10) days after receiving the Contractor's Application for Certification of Final Completion, the Architect, if applicable, and the Project Manager shall review the Work and identify any remaining unfinished or nonconforming Work. If the Architect and the Project Manager agree that all Work is complete and complies with the Specifications, Drawings and this Agreement, they shall issue a Certificate of Final Completion. If the Architect, if applicable or the Project Manager determines that any Work is incomplete or fails to comply with the Specifications, Drawings or this Agreement, the Contractor's Application for Certification of Final Acceptance shall be denied, and the Contractor shall complete or correct the Work and submit another Application for Certification of Final Completion. The Contractor shall pay all costs associated with the Contractor's second, and subsequent, Applications for Certification of Final Completion.
- 20.9 *EFFECT OF CERTIFICATES:* The issuance of a Certificate of Substantial Completion or a Certificate of Final Completion shall not release the Contractor from liability for defective Work or Work that fails to comply with the Specifications or Drawings to the extent that such defect or nonconformity is not readily evident from visual of the Work Site.

## **Article 21. Use and Possession Prior to Completion**

- 21.1 *COORDINATION & OCCUPANCY CERT.:* HAKC may use and possess the Work Site and completed and partially completed portions of the Work. The Contractor shall coordinate the Work to facilitate HAKC's use and possession of the Work Site and completed or partially completed portions of the Work. If applicable, the Contractor shall obtain certificates of occupancy from the appropriate authorities before HAKC or HAKC Residents occupy the Work.

- 21.2 *NOTICE OF DELAY:* The Contractor immediately shall provide written notice to the Project Manager if the Contractor believes that HAKC's use or possession of the Work Site or the Work will delay or hinder, or has delayed or hindered, performance of the Work. The Contractor shall waive its rights to damages, an extension of time or other relief for such delay or hindrance, if the Contractor fails to submit such written notice within seven (7) days after commencement of the delay or hindrance

#### **Article 22. Warranty of Title**

*See* Article 22. General Conditions of the Contract for Construction HUD form 5370.

#### **Article 23. Warranty of Construction**

- 23.1 *WARRANTY OBLIGATIONS:* The Contractor shall restore or remove-and-replace warranted Work to its originally specified condition, during the warranty period if the Work does not comply with or fulfill terms of warranty. The Contractor shall restore or remove-and-replace other Work which has been damaged by failure of warranted Work, or which must be removed and replaced to gain access to warranted Work. The Contractor shall pay the cost of restoration or removal-and-replacement without regard to whether HAKC has already benefitted from use of failing Work.
- 23.2 *HAKC'S RECOURSE:* The Contractor's warranties and warranty periods shall not diminish implied warranties, and shall not deprive HAKC of actions, rights or remedies otherwise available as a result of Contractor's failure to fulfill requirements of this Agreement. HAKC reserves the right to reject coincidental product warranties considered to be conflicting with or detracting from requirements of this Agreement.

#### **Article 24. Prohibition Against Liens**

- 24.1 *PARTIAL LIEN WAIVERS:* The Contractor shall attach to every Application for Payment, a notarized Partial Lien Waiver that completely disclaims and waives the Contractors' right to file or maintain a lien against HAKC's property, to the extent of payments previously made to the Contractor. The Contractor shall fully pay, in a timely manner, all Subcontractors, and all agents, persons or entities claiming by or through such Subcontractors. The Contractor shall obtain and attach to every Application for Payment, a notarized Partial Lien Waiver from every Subcontractor that disclaims and waives the Subcontractor's right to file or maintain a lien against HAKC's property, to the extent of payments previously made to such Subcontractor.
- 24.2 *FINAL LIEN WAIVER & RELEASE:* The Contractor shall attach to its Application for Final Payment a notarized Final Lien Waiver and Release that completely disclaims and waives the Contractor's right to file or maintain any lien against HAKC's property. The Contractor shall obtain and attach to its Application for Final Payment a notarized Final Lien Waiver and Release from every Subcontractor that completely disclaims and waives the Subcontractor's right to file or maintain a lien against HAKC's property. Both Contractor and HAKC agree and understand that said Final Lien Waiver & Release shall be binding upon Contractor's receipt of the final payment from HAKC.
- 24.3 *BOND IN LIEU OF LIEN WAIVER:* If any Subcontractor fails or refuses to furnish a valid or complete Lien Waiver, or Final Lien Waiver and Release, the Contractor shall furnish a bond satisfactory to HAKC to indemnify HAKC against any claim by lien or otherwise.
- 24.4 *UNSATISFIED LIENS & CLAIMS:* If any lien or claim remains unsatisfied after Final Payment, the Contractor shall refund to HAKC all monies necessary to discharge such lien or claim, and shall compensate HAKC for all costs, reasonable attorney's fees, and other damages relating to the lien or claim.

#### **Article 25. Contract Completion Period**

- 25.1 *TIME OF THE ESSENCE:* The Contractor agrees and acknowledges that time is of the essence in the performance of this Agreement
- 25.2 *CONTRACT COMPLETION PERIOD:* The contract completion period shall commence on the date of the written Notice To Proceed. The Contractor shall complete all work as required in this contract and shall submit an application for a Certificate of Substantial Completion within \_\_\_\_\_ **calendar days** after the date of the written Notice to Proceed.

## Article 26. Order of Precedence

See Article 26, General Conditions of the Contract for Construction HUD form 5370.

## Article 27. Payments

- 27.1 **CONTRACT PRICE & TAXES:** HAKC agrees to pay, and the Contractor agrees to accept as payment, for the performance of this Agreement, the sum of: \_\_\_\_\_ (the "Contract Price"). The Contractor shall pay all taxes and contributions measured by wages which may be applicable to this Agreement. Personal property and materials purchased for the purpose of constructing the Work is exempt from sales tax. HAKC shall furnish to the Contractor a tax exemption certificate authorizing the purchase of personal property and materials for the construction, repair and remodeling of the Work. The Contractor shall furnish such certificate to all Sub-contractors. When the Contractor and/or any Sub-contractor purchases personal property or materials, the Contractor and/or Sub-contractors shall present the tax exemption purchase on behalf of HAKC all tangible personal property and materials to be consumed in or incorporated into the Work. The Contractor shall retain all invoices for all personal property and materials consumed in or incorporated into the Work for a period of five (5) years.
- 27.2 **PRICE BREAKDOWN:** The Contractor shall submit a breakdown of the Contract Price ("Price Breakdown") in triplicate to the Contracting Officer, in accordance with Clause 27(c) of the General Conditions. The Price Breakdown shall be prepared on form HUD-51000, Schedule of Amounts for Contract Payments. The Price Breakdown shall consist of major aspects of the Work, and identify separately the dollar values of each Subcontract and contracts with Minority Businesses and Women's Business Enterprises. No payments shall be due until the Price Breakdown is submitted in a form satisfactory to the Project Manager.
- 27.3 **SUBMISSION OF PAYMENT APP.:** On the fifth (5th) day of each calendar month in which Work is performed, the Contractor shall submit four (4) copies of its Application for Payment to the Project Manager, prepared in a manner consistent with the Price Breakdown. The Application for Payment shall request payment for the labor and materials incorporated into the Work and materials suitably stored during the preceding calendar months, less the aggregate of previous payments and specified retainage.
- 27.4 **FORM OF PAYMENT APPLICATIONS:** The Contractor shall include the following items in every Application for Payment, in a form satisfactory to the Project Manager.
- A. **Cover Letter:** The Contractor shall submit a cover letter that: (1) identifies the Project; (2) assigns a number to the Application for Payment; and, (3) contains a detailed list of enclosures.
  - B. **Price Breakdown:** The Contractor shall submit a copy of the Price Breakdown, prepared in accordance with Paragraph 27.2.
  - C. **Periodic Estimate for Partial Payment:** The Contractor shall complete and submit form HUD-51001, Periodic Estimate for Partial Payment.
  - D. **Change Order Documentation:** The Contractor shall complete and submit form HUD-51002, Schedule of Change Orders. The Contractor shall submit a copy of every Change Order issued by the Contracting Officer.
  - E. **Stored Materials Documentation:** If the Application for Payment requests payment for materials stored, but not yet incorporated into the Work, the Contractor shall: (1) complete and submit form HUD-51003, Schedule of Materials Stored; (2) complete and submit form HUD-51004, Summary of Materials Stored; and, (3) submit other documentation required by Clause 27(g) of the General Conditions. Such documentation of stored materials shall identify: (1) the Contractor or Subcontractor responsible for storing such materials; and, (2) the location where such materials are stored. Form HUD-51003 shall be signed by those employees of the Contractor that prepared and verified such form.
  - F. **Payroll Documentation and Statement of Compliance:** The Contractor shall complete and submit Department of Labor form WH-347, Payroll, pages 1 and 2. The Contractor shall also obtain and submit Department of Labor forms WH-347, page 2, prepared by each Subcontractor performing

Work during the month for which payment is requested.

- G. *Certificate Regarding Payment:* The Contractor shall complete and submit the certification regarding payment, required by Clause 27(e) of the General Conditions.
  - H. *Construction Progress Schedule:* The Contractor shall complete and submit form HUD-5372, Construction Progress Schedule. The Contractor shall update the information contained on form HUD-5372 within one week preceding the submission of its Application for Payment.
  - I. *Certificate and Release:* The Contractor shall complete and submit a Certificate and Release, on HAKC's current form.
  - J. *Partial Lien Waivers:* Contractor shall execute and submit Partial Lien Waivers applicable to the Contractor and every Subcontractor as required by Article 24. The Contractor shall also submit all previously executed Partial Lien Waivers.
  - K. *CPM Progress Schedule:* The Contractor shall update and submit its CPM Schedule, as required by Article 6.
  - L. *Photographs and Videotape:* The Contractor shall submit photographs and videotapes, as required by Article 50; and,
  - M. *Other Documents:* In addition to the above, the Contractor shall submit other documentation, if any, required by this Agreement.
- 27.5 *PAYMENT CERTIFICATE:* After receiving the Contractor's Application for Payment, the Project Manager shall either issue to the Contracting Officer a Certificate for Payment for such amount as the Project Manager determines is properly due, or notify the Contracting Officer of its reasons for rejecting the Application for Payment, in whole or in part. The Project Manager shall return the Application for Payment to the Contractor within seven (7) days after receiving such application, and shall specify the reason(s) for returning the application, if the Project Manager determines: (1) the Application for Payment lacks adequate substantiating data; or, (2) the form of the Application for Payment is unsatisfactory.
- 27.6 *PAYMENT:* Within fourteen (14) days after the Project Manager receives the Contractor's Application for Payment, unless a longer period (not to exceed thirty (30) days) is necessary to afford the Architect and/or the Project Manager a practicable opportunity to adequately inspect the Work and determine the adequacy of the Contractor's performance under this Agreement, the HAKC shall either pay the Contractor the amount certified by the Architect and/or the Project Manager or notify the Contractor of its reasons for withholding payment, in whole or in part.
- 27.7 *REJECTION OF PAYMENT APPLICATION:* The Architect and/or the Project Manager may reject an Application for Payment (including an Application for Final Payment) or withhold payment, in whole or in part, to the extent reasonably necessary to protect the interests of HAKC. Applications for Payment (including an Application for Final Payment) may be rejected and payment may be withheld from the Contractor for reasons including, but not limited to, the following: (1) citation by a public agency or authority for acts of the Contractor or any Subcontractor which violate any federal, state or local law, regulation or ordinance; (2) liquidated damages; (3) unsatisfactory progress; (4) defective Work not remedied; (5) disputed Work; (6) failure to strictly comply with any provision of this Agreement; (7) third party claims filed, or reasonable evidence that such claim will be filed, as a result of the Work or the Contractor's conduct; (8) failure to make timely payment for labor, equipment or materials; (9) reasonable evidence that a Subcontractor cannot be fully compensated under its contract with the Contractor for the unpaid balance of the Contract Price; and, (10) damage to another contractor, Subcontractor.
- 27.8 *EFFECT OF PAYMENT:* The issuance of a Certificate for Payment and the making of payment to the Contractor shall not represent that the Architect and/or Project Manager has: (1) made exhaustive or continuous on-site inspections to check the quantity of the Work; (2) reviewed the Contractor's means, methods, techniques, sequences or procedures; (3) reviewed copies of requisitions received from Subcontractors to substantiate the Contractor's right to payment; or (4) attempted to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Price. The issuance of a

Certificate for Payment and the making of payments under this Agreement shall not be evidence of the satisfactory performance of the Work, in whole or in part. The issuance of a Certificate for Payment and the making of payments shall not be construed as an acceptance of defective Work or improper materials.

- 27.9 *ERRONEOUS PAYMENT APP.*: If the Contractor, after submitting an Application for Payment or an Application for Final Payment, discovers that a portion or all of such application requested payment for Work that fails to conform to the Specifications, Drawings, or this Agreement, then the Contractor shall: (1) notify the Contracting Officer of such performance deficiency; and (2) pay HAKC interest on the value of the nonconformity (computed in the manner provided in 5 U.S.C. § 3909(c)) from the date of the Contractor's receipt of payment for the deficient Work until: (A) the date the Contractor notifies the Contracting Officer that the nonconformity has been corrected; or (B) the date that the Contractor reduces the amount of any subsequent Application for Payment by an amount equal to the value of nonconformity.
- 27.10 *RETAINAGE*: The Contracting Officer shall retain ten percent (10%) of each payment to the Contractor, unless the Architect and/or the Project Manager or the Contracting Officer determines that a higher rate of retainage is required to ensure performance of this Agreement. In no event shall the retainage exceed ten percent (10%) of the Contract Price. Within thirty (30) days after Certification of Substantial Completion, HAKC shall pay the retainage to the Contractor, less two times (2X) the dollar value of any unfinished or nonconforming Work, and less the dollar value of any claims asserted by HAKC and other deductions authorized by this Agreement or permitted by law.
- 27.11 *FINAL PAYMENT APPLICATION*: The Contractor shall submit an Application for Final Payment to the Architect after issuance of the Certificate of Final Completion. In addition to the items required in every Application for Payment, the Application for Final Payment shall include the following:
- A. *Consent of Surety*: The Contractor shall submit a properly executed AIA Document G707, Consent of the Surety Company to Final Payment;
  - B. *Certificate of Completion-Consolidated*: The Contractor shall submit a Certificate of Completion-Consolidated, on HAKC's current form.
  - C. *Warranties & Manuals*: The Contractor shall submit all written warranties, guarantees, maintenance agreements, workmanship bonds and manuals relating to the Work or components thereof.
  - D. *Release of Claims*: The Contractor shall submit a release of all claims against HAKC arising by virtue of this Agreement, other than claims, in stated amounts, that the Contractor has specifically excepted from the release. If any claims are excepted from the release, the Contractor shall clearly define the basis and scope of each individual claim. The Contractor shall not request payment for excepted claims in its Application for Final Payment.
  - E. *Final Lien Waiver & Release*: The Contractor shall execute and submit a Final Lien Waiver and Release. The Contractor also shall obtain and submit a Final Lien Waiver and Release from every Subcontractor.
  - F. *Wages, Hours & Dismissal Rights Affidavit*: The Contractor shall submit an affidavit stating that it has fully complied with the provisions and requirements of Chapter 290, Wages, Hours and Dismissal Rights, of Missouri's Revised Statutes. The Contractor shall submit similar affidavits that it has obtained from each Subcontractor, after the Subcontractor has completed its portion of the Work.
  - G. *Stock & Parts*: The Contractor shall submit evidence that extra stock and spare parts, tools, and keys required by this Agreement, if any, have been submitted to the Project Manager or placed in approved storage areas at the Work Site.
- 27.12 *FINAL PAYMENT CERTIFICATE*: After receiving the Contractor's Application for Final Payment, the Architect and/or Project Manager shall either issue to the Contracting Officer a Certificate for Final Payment for such amount as the Architect and/or Project Manager determines is properly due, or notify the Contracting Officer of its reasons for rejecting the Application for Final Payment, in whole or in part. The Architect and/or Project Manager shall return the Application for Final Payment to the Contractor within seven (7)

days after receiving such application, and shall specify the reason(s) for returning the application, if the Architect and/or Project Manager determines: (1) the Application for Final Payment lacks adequate substantiating data; or, (2) the form of the Application for Final Payment is unsatisfactory.

- 27.13 *FINAL PAYMENT:* Within fourteen (14) days after the Architect and/or the Project Manager receives the Contractor's Application for Final Payment, unless a longer period (not to exceed thirty (30) days) is necessary to afford the Architect and/or Project Manager a practicable opportunity to adequately inspect the Work and determine the adequacy of the Contractor's performance under this Agreement, the Contracting Officer shall either pay the Contractor the amount certified by the Architect and/or Project Manager or notify the Contractor of its reasons for withholding Final Payment, in whole or in part. The Contracting Officer shall not make Final Payment to the Contractor, unless or until the Contractor submits the affidavits required by RSMo. § 290.290, concerning compliance with Chapter 290, Wages, Hours, and Dismissal Rights, of Missouri's Revised Statutes.

## **Article 28. Contract Modifications**

*See* Article 28, General Conditions of the Contract for Construction HUD form 5370.

## **Article 29. Changes**

- 29.1 *PERFORMANCE OF CHANGED WORK:* The Contractor shall not perform Work requiring reimbursement in addition to the Contract Price, or extensions of the Contract Time, without receiving a prior written Change Order issued by the Architect and /or Project Manager signed by the Contracting Officer.
- 29.2 *CHANGE ORDER APPLICATIONS:* If the Contractor believes that any instruction, act, or event justifies a change in the Contract Price, the Contract Time, or other provision of this Agreement, the Contractor shall submit to the Architect and/or Project Manager a written Application for a Change Order.
- 29.3 *DELAYS:*
- 29.3.A. *Sources of Delay Claims:* If the Contractor is delayed at any time while performing the Work by labor disputes, fire, extraordinary adverse weather conditions not reasonably anticipatable, unavoidable casualties, environmental hazards or any cause which the Contractor believes justifies an extension of time, the Contractor shall submit to the Architect and/or Project Manager an Application for a Change Order, seeking an extension of the Contract Time.
- 29.3.B. *Critical Path Delays:* In no event shall the Contract Time be extended as the result of a delay, unless Work on the critical path of the CPM Progress Schedule has been delayed.
- 29.3.C. *Weather Delays:* If adverse weather conditions are the basis for the Contractor's Application for a Change Order, such application shall be documented by data substantiating that: (1) weather conditions were abnormally severe for month in which such conditions occurred, and could not have been reasonably foreseen; (2) such weather conditions delayed the scheduled construction; and, (3) the Contractor did not contribute to the delay in the construction. The Contractor shall not be awarded a Change Order due to adverse weather conditions if the Contractor fails to submit such documentation to the Architect and/or Project Manager
- 29.4 *CONTENT OF CHANGE ORDER APP.:* The Contractor's Application for a Change Order shall provide a detailed explanation of the change requested, including, but not limited to: (1) facts giving rise to such Application for a Change Order; (2) the identification, quantity, and cost of machinery, equipment and materials associated with the change; (3) a description of the types, hours and pay rates of laborers required by such change; (4) the amount of additional time required for performance of the change; (5) information and dates indicating whether, and to what extent, the change will delay the completion of the Work in its entirety; (6) transportation and delivery costs associated with the change; (7) costs of preparation and/or revision to specifications or Drawings resulting from the change; (8) any increase in insurance or bond premiums; (9) increases or decreases in the use or funding of Minority Businesses or Women's Business Enterprises; and, (10) such other information, if any, that may be required by the Architect, and/or Project Manager, or the Specifications.

- 29.5 *ACTUAL COSTS*: The Contractor's Application for a Change Order shall state the Contractor's actual cost of furnishing machinery, equipment, materials and labor, without including amounts for the Contractor's overhead or profit. If requested by the Architect and/or the Project Manager, the Contractor shall submit satisfactory evidence that its Application for a Change Order does not include amounts for overhead or profit.
- 29.6 *TIME FOR CHANGE ORDER APP.*: Contractor shall assert its written Application for a Change Order to the Architect and/or Project Manager within seven (7) days after the occurrence of the act or event giving rise to such request. Failure by Contractor to submit its written Application for a Change Order within the preceding time shall constitute a waiver of the Contractor's rights, if any, to an adjustment of the Contract Price, the Contract Time, or other provision of this Agreement.
- 29.7 *CHANGE ORDER APP. DECISIONS*: Within thirty (30) days after receiving the Contractor's Application for a Change Order, the Contracting Officer shall grant or deny the Contractor's application, or notify the Contractor of the date when such action will be taken. If the Contracting Officer grants the Contractor's Application for a Change Order, in whole or in part, the Architect and/or Project Manager shall issue a written Change Order, as provided below. If the Contracting Officer denies the Contractor's Application for a Change Order, the Contractor may pursue its claim under Article 31, Disputes.
- 29.8 *ISSUANCE OF CHANGE ORDERS*: The Contracting Officer may, at any time, make changes to this Agreement, including but not limited to changes in: (1) the scope of the Work; (2) the method of performing the Work; and (3) the rate of performance of the Work. Notwithstanding any provision to the contrary, this Agreement cannot be orally modified. All changes shall be made in a writing signed by the Contracting Officer and describing the change ("Change Order").
- 29.9 *CONTENT OF CHANGE ORDERS*: All Change Orders shall include: (a) a detailed description of the change in the Work, including a reference to applicable Specifications and Drawings; (b) the extent of the adjustment in the Contract Price, if any; and, (c) the extent of the adjustment in the Contract Time, if any.
- 29.10 *OVERHEAD AND PROFIT*: If a Change Order increases the Contract Price, the Contracting Officer may include amounts for overhead and profit in the dollar value of the Change Order. The Contracting Officer, in its sole discretion, shall determine the amount of overhead and profit in accordance with the Specifications.
- 29.11 *PERFORMANCE OF CHANGES*: The issuance of Change Orders shall not invalidate this Agreement. Unless expressly provided otherwise in writing, the Contractor shall perform all changed Work in compliance with the terms and conditions of this Agreement.

### **Article 30. Suspension of Work**

*See* Article 30. General Conditions of the Contract for Construction HUD form 5370.

### **Article 31. Disputes**

- 31.1 *CLAIMS DEFINED*: The term "Claim" as used in this Article 31, means a demand or assertion by the Contractor seeking payment of money, the adjustment or interpretation of Agreement terms, or other relief arising under or relating to this Agreement. Applications for Change Orders pursuant to Article 29, Changes, and routine Applications for Payment shall not constitute Claims.
- 31.2 *SUBMISSION OF CLAIMS*: Within thirty (30) days after the Contractor knows, or should have known, the facts giving rise to a Claim, the Contractor shall submit its Claim(s) in writing to the Architect and/or Project Manager. The Contractor acknowledges that HAKC will be prejudiced if the Contractor fails to submit its Claim(s) in the time provided. **Failure by the Contractor to assert a written Claim within the time provided shall constitute a waiver of such Claim and all rights associated therewith.**
- 31.3 *CONTINUED PERFORMANCE OF WORK*: Contractor shall proceed diligently with the performance of the Work required under this Agreement pending final resolution of any Claim or legal action arising under this Agreement, and shall comply with any decision of the Contracting Officer.



- 31.4 *CONTENT OF CLAIMS*: The Contractor's Claim shall provide a detailed description of the facts giving rise to such Claim and the nature and scope of the Contractor's demand. The Claim shall contain sufficient information to enable the Contracting Officer to make an informed decision concerning the Claim.
- 31.5 *DECISIONS REGARDING CLAIMS*: Within sixty (60) days after receipt of a written Claim, the Contracting Officer shall render a decision concerning the Claim. The Contracting Officer shall issue a written decision to HAKC and the Contractor, by certified mail, return receipt requested. Failure of the Contracting Officer to issue a decision within the sixty (60) day period shall have the effect of a denial of the Contractor's Claim. The Contracting Officer's determination of Claims shall be final and binding of the contractor.

## Article 32. Default

- 32.1 *HAKC'S RIGHT TO PERFORM WORK*: If Contractor fails or neglects to perform the Work properly or strictly comply with any provision of this Agreement, HAKC may, without prejudice to any other right or remedy HAKC may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor.
- 32.2 *TERMINATION FOR CAUSE*
- 32.2.A. *"Causes" for Termination*: Any of the following conditions shall justify HAKC's termination of this Agreement "for cause": (1) the Contractor fails to prosecute the Work, or a separable part thereof, with the diligence that will ensure its completion within the time specified in this Agreement; (2) the Contractor fails to complete the Work, or any separable part thereof, in the time specified in this Agreement; (3) the Contractor fails to make payment to a Subcontractor in accordance with the respective agreement between the Contractor and such Subcontractor; (4) the Contracting Officer determines that the Contractor has an Organizational Conflict of Interest; (5) the Contractor becomes subject to mandatory ineligibility to contract with HUD, under applicable laws and regulations; or, (6) the Contractor fails to strictly comply with any term, condition, or provision of this contract.
- 32.2.B. *Notice of Intent to Terminate for Cause*: Upon occurrence of any of the conditions specified in the preceding paragraph, HAKC may give the Contractor written notice that: (1) specifies the condition constituting cause for termination; (2) provides a period of ten (10) days in which the Contractor may cure the condition; (3) informs the Contractor of HAKC's intent to terminate this Agreement if the Contractor fails to cure the condition during the ten (10) day period; (4) informs the Contractor of its contractual liabilities if this Agreement is terminated for cause; and, (5) requests the Contractor to show cause why this Agreement should not be terminated for cause.
- 32.2.C. *Notice of Termination for Cause*: If the Contractor fails to cure the condition constituting cause for termination during the ten (10) day period, HAKC may terminate this Agreement for cause, by issuing a notice of termination to the Contractor.
- 32.2.D. *Effect of Termination for Cause*: If this contract is terminated for cause, Contractor and its sureties shall be liable for any damage to HAKC resulting from Contractor's refusal or failure to perform the Work in compliance with this Agreement, including attorneys' fees, interest, and any increased costs incurred by HAKC while completing the Work with replacement contractors.
- 32.2.E. *Unauthorized Termination for Cause*: If, after termination for cause, it is determined that such Termination for Cause was not authorized by this Article, then the rights and obligations of the parties will be the same as if this Agreement had been terminated for convenience pursuant to Article 34.

## Article 33. Liquidated Damages

- 33.1 *LIQUIDATED DAMAGES*: For each calendar day that the Contractor has not obtained an executed Certificate of Substantial Completion for Work, HAKC shall be entitled to recover from the Contractor the sum of Dollars & Zero Cents (\$0.00) per calendar day, not as a penalty, but as liquidated damages.
- 33.4 *RECOVERY OF LIQUIDATED DAMAGES*: HAKC shall be entitled to recover liquidated damages from the Contractor immediately as those damages accrue. HAKC may recover liquidated damages from the Contractor and/or may set-off liquidated damages from amounts then or thereafter due the Contractor.

Notwithstanding the assessment of liquidated damages, the Contractor shall be liable to HAKC for damages caused other than by delay.

#### **Article 34. Termination for Convenience**

- 34.1 *TERMINATION FOR CONVENIENCE DEFINED:* The Contracting Officer may, at any time, terminate this Agreement, in whole or in part, for HAKC's convenience and without cause.
- 34.2 *PROPOSAL OF AMOUNTS OWED:* If this Agreement is terminated for convenience, the Contractor shall submit a proposal to the Contracting Officer stating the Contractor's claim for all amounts owed ("Proposal"). The Proposal shall be submitted within fourteen (14) days after the effective date of termination.
- 34.3 *EFFECT OF TERMINATION FOR CONVENIENCE:* The Contracting Officer shall not be bound by the Proposal, but should consider the Proposal when determining the amount owed to the Contractor. The Contractor shall receive payment for the total value of the Work performed before termination for convenience, less the total and the amount of any claims that HAKC asserts against the Contractor. If this Agreement is partially terminated for convenience, the Contracting Officer shall reduce the Contract Price in proportion to the percentage of work terminated.
- 34.4 *TERMINATION GENERALLY:*
- 34.4.A. *Notice of Termination:* Termination of this contract shall be effected by delivery to the Contractor of written notice of termination, sent by certified mail, return receipt requested, specifying: (1) whether the termination is for cause or convenience; (2) the extent to which the performance of the Work is terminated; (3) the effective date of termination; and, (4) any special instructions. If the contract is partially terminated, the notice of termination shall identify specific items being terminated, and shall notify the Contractor of its obligation to proceed under the un-terminated portion of the contract. If the contract is terminated for cause, the notice of termination additionally shall state: (1) the acts or omissions constituting cause for termination; (2) the Contracting Officer's determination that the Contractor's failure to perform is not excusable; and (3) HAKC's rights to charge excess costs of re-procurement and completion to the Contractor. Contractor shall deliver a copy of the notice of termination to its surety or sureties.
- 34.4.B. *Completion After Termination:* Upon the termination of this Agreement, for cause or convenience, HAKC may take over the Work and complete it by whatever method HAKC may deem expedient, may accept assignment of Subcontracts pursuant to Article 37 of this Agreement, and may take possession of and use all materials, equipment, and plant on the Work Site. Upon termination, the Contractor shall follow the Contracting Officer's instructions regarding the transition of the responsibilities, including immediate delivery to the Contracting Officer of all files, papers and records related to the Contractor's performance of this Agreement.
- 34.4.C. *Disputes Regarding Termination:* Disputes relating in any way to termination shall be governed by the provisions of Article 31, Disputes.

#### **Article 35. Assignment of Contract**

See Article 35 General Conditions of the Contract for Construction HUD form 5370

#### **Article 36. Insurance and Bonds**

- 36.1 *COST OF INSURANCE:* The Contractor shall maintain all insurance required by this Agreement at the Contractor's own expense.
- 36.2 *DIVISIONS OF CGL COVERAGE:* The Commercial General Liability ("CGL") insurance required by Clause 36 of the General Conditions shall include the following divisions of coverage: (1) Premises Operations; (2) Independent Contractors' Protective; (3) Products and Completed Operations; and, (4) Broad Form Property Damage. The Contractor shall maintain the Products and Completed Operations coverage for two (2) years following Final Payment. The Broad Form Property Damage Coverage shall include Completed Operations. The CGL policy shall include coverage for property damage resulting from blasting, explosion, or collapse of buildings. The policy limits of the CGL policy shall apply to liability relating to this

Agreement only.

- 36.3 *CGL POLICY LIMITS*: The CGL policy shall contain policy limits of not less than the following:

**Liability/Bodily Injury:**

\$3,000,000.00 all claims for single occurrence.  
\$400,000.00 for any one person in a single occurrence

**Property Damage:**

\$500,000 each occurrence: and,

**Products and Completed Operations:**

\$500,000 each occurrence

- 36.4 *CONTRACTUAL LIABILITY COVERAGE*:

The Contractor shall maintain Contractual Liability insurance, containing policy limits of not less than the following:

**Bodily Injury:**

\$500,000 each occurrence; and,

**Property Damage:**

\$500,000 each occurrence

- 36.5 *AUTOMOBILE LIABILITY POLICY LIMITS*: The Automobile Liability insurance required by Clause 36 of the General Conditions shall contain policy limits of not less than the following:

**Bodily Injury:**

\$500,000 each person,  
\$500,000 each occurrence; and,

**Property Damage:**

\$500,000 each occurrence

- 36.6 *PERSONAL INJURY COVERAGE*: The Contractor shall maintain Personal Injury insurance, with the employment exclusion deleted, containing policy limits of not less than:

\$500,000 each occurrence

- 36.7 *WORKER'S COMPENSATION COVERAGE*: The Worker's Compensation insurance required by Clause 36 of the General Conditions, shall contain policy limits equal to, or greater than, the policy limits required by state or federal law, and not less than:

\$500,000 per accident;  
\$100,000 disease, policy limit;  
\$100,000 disease, each employee

- 36.8 *BUILDERS RISK INSURANCE COVERAGE*: Contractor shall maintain Builder's Risk Insurance coverage consistent with HUD requirements as set forth in Article 36 of the General Conditions Form HUD-5370. The amount of coverage shall be the full cash value of all completed construction.

- 36.9 *NAMED INSURED*: HAKC shall be a named additional insured on all insurance policies required by this Agreement.

- 36.10 *NON-WAIVER OF SOVEREIGN IMMUNITY*: The HAKC is a public entity and political subdivision of the State of Missouri and is protected by the doctrine of sovereign immunity pursuant to Section 537.600 RSMo. The foregoing provisions requiring insurance coverage shall not be deemed a relinquishment or waiver of any kind of limitations of liability provided or available to HAKC under

applicable state governmental immunities law. The purpose of this insurance does not include coverage for any liability or suit for damages that is barred by the doctrines of sovereign or governmental immunity by whatever name, as set forth in RS MO 537.600, et. seq. This policy is not intended to act as a waiver, nor is it a waiver of any defense available to the Insured by statute or at common-law.

36.11 *BONDS:*

36.11.A. *Bid Guarantee:* Each bidder shall submit to HAKC a bid guarantee equivalent to five percent (5%) of the bid price. Each bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying the bid, as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

36.11.B. *Performance Bond:* Before commencement of the Work, the Contractor shall deliver to the Contracting Officer an executed Performance Bond, issued in favor of HAKC in an amount equal to one hundred percent (100%) of the Contract Price consistent with the obligation within form HUD-5369, paragraph 10, Assurance of Completion.

36.11.C. *Payment Bond:* Before commencement of the Work, the Contractor shall deliver to the Contracting Officer an executed Labor and Material Payment Bond, issued in favor of HAKC in an amount equal to one hundred percent (100%) of the Contract Price. Such bond shall expressly incorporate the obligations created by the Davis-Bacon Act, and Missouri law regarding prevailing wages and prompt payment on public works contracts. The Contractor's bond shall satisfy the requirements of Missouri Revised Statutes § 107.170. The Contractor shall indemnify HAKC's officers, agents, and employees for any liability, including court costs and attorneys' fees, relating to the Contractor's failure to obtain such bond.

36.11.D. *Sureties:* The Contractor shall obtain the performance bond and the payment bond from one or more of the surety companies listed in the most recently published U.S. Treasury Circular 570 (often referred to as the "T-list"). The Contractor shall keep the sureties informed of the progress of the Work, and, where necessary, obtain the sureties' consent to: (1) changes in the Work; (2) reduction or release of retention; (3) Final Payment; (4) termination of this Agreement; and, (5) all other issues requiring the sureties' consent.

**Article 37. Subcontracts**

37.1 *APPROVAL OF SUBCONTRACTORS:* The Contractor shall not engage Subcontractors without the prior written approval of HAKC. Regardless of HAKC's prior approval, the Contractor shall be responsible for all actions and/or inactions by said Subcontractors that relate in any way to this Agreement.

37.2 *HAKC AND SUBCONTRACTORS:* Nothing contained in this Agreement shall create any professional obligation or contractual relationship between HAKC and any Subcontractor, except that HAKC shall be an intended third-party beneficiary of all agreements between Contractor and such parties. Contractor shall include language in every Subcontract which indicates that HAKC is an intended third-party beneficiary of such Subcontract.

37.3 *ASSIGNMENT OF SUBCONTRACTS:* The Contractor shall incorporate a clause in every Subcontract that authorizes assignment of such Subcontract from the Contractor to HAKC in the event that: (1) the Contractor is terminated pursuant to Articles 32 or 34 of this Agreement; and, (2) HAKC accepts assignment of such Subcontracts within ten (10) business days after the date of termination by notifying the Subcontractor in writing.

37.4 *FLOW-DOWN OF OBLIGATIONS:* By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work performed by the Subcontractor, to be bound to the Contractor by the terms of this Agreement, and to assume toward the Contractor all obligations and responsibilities which the Contractor assumes toward HAKC. The Contractor shall incorporate into every Subcontract all obligations regarding Subcontractors contained in this Agreement. Each Subcontract shall preserve and protect the rights of HAKC under this Agreement with respect to the Work to be performed by the Subcontractor. The Contractor shall require each Subcontractor to enter into similar agreements with their Subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to execution of its Subcontract, copies of this Agreement to which the Subcontractor will be bound. The Contractor shall ensure that its

Subcontractors make available this Agreement to their proposed Subcontractors.

- 37.5 ***SUBSTITUTION OF SUBCONTRACTORS:*** The Contractor may substitute Subcontractors or modify agreements with Subcontractors only after obtaining written approval of the Contracting Officer. If such substitutions or changes would result in the Contractor failing to meet the employment standards or other requirements set forth in this Agreement, the Contractor shall submit a request for waiver of such requirements to the Contracting Officer.
- 37.6 ***PAYMENT OF SUBCONTRACTORS:*** The Contractor shall include clauses in each Subcontract that: (1) require the Contractor to pay the Subcontractor under its Subcontract, within seven (7) days after the Contractor receives payment under this Agreement for satisfactory Work performed, or materials or services supplied by the Subcontractor; (2) obligate the Contractor to pay to the Subcontractor an interest penalty on late payments, beginning on the day after payment is due and ending on the day payment is made (and computed at the rate specified in 5 U.S.C. § 3902(a)); and, (3) require the Contractor to include in each of its Subcontracts a provision requiring the Subcontractor to include a payment clause and an interest penalty clause conforming to the standards of (1) and (2) of this Paragraph, in each of the Subcontractor's Subcontracts, and a clause requiring each of the Subcontractor's Subcontractors to include such clauses in their Subcontracts with lower-tier Subcontractors.
- 37.7 ***RETAINAGE:*** The Contractor shall not withhold retainage in excess of five percent (5%) of a Subcontract's value unless the Contracting Officer or the Architect and or the Project Manager determine that a higher rate of retainage is required to ensure performance of the Subcontract. In no event shall the Contractor withhold retainage in excess ten percent (10%) of a Subcontract's value.
- 37.8 ***WAGES & HOURS AFFIDAVIT:*** After each Subcontractor completes its portion of the Work, the Contractor shall obtain from the Subcontractor an affidavit stating that the Subcontractor has fully complied with the provisions and requirements of Chapter 290, Wages, Hours and Dismissal Rights, of Missouri's Revised Statutes.

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

*See* Article 38. General Conditions of the Contract for Construction HUD form 5370.

**Article 39. Equal Employment Opportunity**

*See* Article 39. General Conditions of the Contract for Construction HUD form 5370 for the Contractor's obligations.

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

*See* Article 40. General Conditions of the Contract for Construction HUD form 5370.

**Article 41. Interest of Members of Congress**

*See* Article 41. General Conditions of the Contract for Construction HUD form 5370.

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

*See* Article 42 General Conditions of the Contract for Construction HUD form 5370.

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

*See* Article 43. General Conditions of the Contract for Construction HUD form 5370.

**Article 44. Royalties and Patents**

*See* Article 44. General Conditions of the Contract for Construction HUD form 5370.

**Article 45. Examination and Retention of Contractor's Records**

*See* Article 45. General Conditions of the Contract for Construction HUD form 5370.

**Article 46. Labor Standards: Davis-Bacon and Related Acts**

46.1 *COMPLIANCE AND INDEMNIFICATION:* The Contractor shall follow and enforce all requirements of the Davis-Bacon Act. The Contractor shall pay not less than the applicable wage rates established by state or federal law to all employees performing the Work. The Contractor shall ensure that all Subcontractors also pay not less than the applicable wage rates. The Contractor shall assume exclusive liability for and defend, indemnify (including the payment of attorneys' fees) and hold HAKC harmless from liability relating to wage withholdings or contributions. Prior to Final Payment, the Contractor shall submit to the Contracting Officer an affidavit stating that the Contractor and its Subcontractors have fully complied with the Davis-Bacon Act.

**Article 47. Labor Standards-Non-Routine Maintenance**

*See* Article 47. General Conditions of the Contract for Construction HUD form 5370.

**Article 48. Non-Federal Prevailing Wage Rates**

*See* Article 48 General Conditions of the Contract for Construction HUD form 5370.

**Article 49. Miscellaneous**

49.1. *CONFLICTS OF INTEREST:*

49.1.A. *OCI Defined:* An Organizational Conflict of Interest ("OCI") is a situation in which the nature of Work under this Agreement and the Contractor's organizational, financial, contractual or other interests are such that: (1) Award of this Agreement may result in an unfair competitive advantage; or (2) the Contractor's objectivity in performing the Work required under this Agreement may be impaired. The Contractor warrants that, except as otherwise disclosed to the Contracting Officer in writing, it does not have any OCI.

49.1.B. *Discovery of OCI:* The Contractor agrees that if after award of this Agreement, the Contractor discovers an OCI with respect to this Agreement, the Contractor shall make an immediate and full disclosure in writing to the Contracting Officer, which shall include a description of the action that the Contractor has taken or intends to take to eliminate or neutralize the OCI.

49.1.C. *Subcontracts:* The provisions of this Agreement regarding OCIs shall be included in all Subcontracts. The Contractor shall include in all Subcontracts any and all provisions necessary to eliminate or neutralize conflicts of interests.

49.2 *ENVIRONMENTAL HAZARDS:*

49.2.A. *Environmental Compliance:* Contractor shall perform all Work on the Project in compliance with all federal, state and local environmental laws and regulations. When possession of the Work is transferred to HAKC, the Contractor shall ensure that the Work is unimpaired by environmental liens. When submitting its Application for Certification of Final Completion, Contractor shall verify that the Project is free from any violations of federal, state or local environmental laws, regulations, or ordinances.

49.2.B. *Hazardous Waste:* If the Contractor encounters on the site material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), or other hazardous substances regulated by federal, state or local laws, Contractor shall immediately stop its Work in the area affected and report the condition to HAKC. Work in the affected area shall thereafter be resumed immediately following the occurrence of any one of the following events: (1) HAKC causes remedial work to be performed which results in the absence of the hazardous materials; (2) HAKC and the Contractor, by written agreement, decide to resume performance of the Work; or, (3) an appropriate governmental authority determines that the Work may safely and lawfully proceed, as evidenced by a written report to that effect. Notwithstanding any provision to the contrary, the Contractor shall be solely responsible for the removal, handling, transportation, and disposal of all hazardous waste either

produced on or brought to the Work site by Contractor or any Subcontractor.

#### 49.3 *VIDEOTAPE AND PHOTOGRAPHS*

49.3.A. *Video Footage:* Before starting the Work, the Contractor shall submit to the Contracting Officer video footage of existing site and building conditions. The video footage shall show the exterior of each building on the Project and the interior of non-occupied building units.

49.3.B. *Photographs:* The Contractor shall submit professionally-produced photographs to the Architect along with every Application for Payment. The photographs shall be taken one week before submission to the Architect, and/or the Project Manager. The photographs shall include two (2) photographs of the entire Project from differing directions, five (5) interior photographs indicating the relative progress of the Work, and five (5) exterior photographs which also indicate the relative progress of the work. The Contractor shall submit two (2) prints and the negatives of each photograph. The photograph prints shall be 8" X 10" mounted on 8-1/2" X 11" soft card stock, with a left edge binding margin for a three hole punch. The face of every photograph shall identify the Project, and state the orientation and the time and date on which the photographs were taken.

#### 49.4 *CONTRACT DOCUMENTS:*

49.4.A. *Component Parts:* This Agreement shall consist of the following component parts: (1) this document, entitled Contract for Construction Services; (2) General Conditions of the Contract for Construction, form HUD-5370; (3) Change Orders issued by the Contracting Officer; (4) the Specifications; (5) the Drawings; and (6) the Invitation for Bid (**IFB**) dated \_\_\_\_\_, 2012, that includes, but is not limited to the Scope of Work, certifications, and HUD forms 5369 and 5369 A and all documentation that is included in the IFB.

49.4.B. *Contradictions:* In the event that any provision in any component part of this Agreement contradicts or conflicts with any provision of any other component part, the General Conditions of the Contract for Construction, form HUD-5370 shall govern and control.

49.4.C. *Illegality & Invalidity:* If any provision of this Agreement is determined to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect. It is the intention of the parties that if any such provision is held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is possible which is legal, valid and enforceable.

49.4.D. *Entire Agreement:* This Agreement shall constitute the entire agreement between the parties. There are no agreements, understandings, warranties or representations between the parties except as set forth herein.

49.5 *CONFIDENTIAL INFORMATION:* Unless otherwise required by the Missouri Open Records Law, Chapter 610, Revised Statutes of Missouri, all information received by the Contractor regarding this Agreement and the Work shall be considered non-public and confidential. Contractor hereby acknowledges that said information is deemed non-public information and Contractor shall not disclose any such information to third parties without the prior written approval of HAKC, except as necessary for performance of the Work.

49.6 *NON-WAIVER:* Failure of HAKC to insist upon strict performance of the terms and conditions of this Agreement or to exercise any right or remedy hereunder shall not be construed as thereafter waiving any such terms, conditions, rights or remedies. No action or failure to act by HAKC shall constitute a waiver of any right of HAKC under this Agreement, nor shall any such action or failure to act constitute an approval or acquiescence of any breach hereunder. Waiver of any breach of this Agreement shall not constitute a waiver of any subsequent breach of the same or any other provision hereof.

49.7 *CONSTRUCTION OF THIS AGREEMENT:* This Agreement shall not be construed or interpreted against the drafting party. In the event of a dispute over its meaning or application, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against either party.

49.8 *NOTICES:* Any notice, payment, demand or communication required or permitted to be given by any provision of this Agreement must be in writing and will be deemed to have been given at the earliest of: (1) the date received by the party designated to receive such notice, (2) the date following the day sent by overnight courier, (3) the third (3rd) business day after the same is sent by certified mail, postage and charges prepaid and addressed to the appropriate individual, or (4) the date that notice is sent by electronic facsimile transmission if a signed original is concurrently mailed as provided herein.

49.9 *EMERGENCIES:* In an emergency affecting safety of persons or property, the Contractor shall act, at the

Contractor's discretion, to prevent threatened damage, injury or loss. The Contracting Officer shall, at the Contracting Officer's discretion, award the Contractor additional compensation or an extension of the Contract Time as a result of such emergency action.

49.10 TITLES, HEADINGS & SUBHEADINGS:

The titles, headings and subheadings of Articles and Paragraphs contained in this Agreement are provided only as a matter of convenience and shall have no legal bearing on the interpretation of this Agreement.

49.11 COUNTERPARTS:

This Agreement may be executed at different times and in any number of counterparts, each of which will be deemed an original document, but all of which will constitute a single document. This document will not be binding upon or constitute evidence of a contract between the parties until such time as this document or a counterpart of this document has been executed by both parties and a copy thereof is delivered to the other party to this Agreement.

49.12 INDEMNIFY AND HOLD HARMLESS:

The Contractor agrees to indemnify and hold harmless HAKC, HAKC's directors commissioners, officers, managers, and employees against any and all claims, demands, losses and liabilities (including attorney's fees, costs and expenses of defending against such claims) arising out of any act or omission determined to constitute negligence, recklessness, or willful misconduct by Contractor or Contractor's agents, employees, subcontractors, representatives, and assigns in the performance of this Agreement.

49.13 CHOICE OF LAWS: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Missouri.

49.14 RECEIVERSHIP COURT JURISDICTION:

During the period of time in which HAKC is in receivership, the Receivership Court, the United States District Court for the Western District of Missouri, shall have exclusive jurisdiction over all causes of action asserted by or against HAKC, which arise out of or relate to this Agreement or the Work in any way. After termination of HAKC's receivership, a court of competent jurisdiction in Jackson County, Missouri shall have exclusive jurisdiction over all causes of action asserted by or against HAKC that arise out of or relate to this Agreement or the Work in any way.



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IN WITNESS WHEREOF, EACH PARTY HAS CAUSED THIS INSTRUMENT TO BE SIGNED ON ITS BEHALF BY ITS DULY-AUTHORIZED AGENT, AFTER HAVING READ THIS AGREEMENT THE TERMS AND THE CONSEQUENCES THEREOF.

HOUSING AUTHORITY OF KANSAS CITY, MISSOURI

By: \_\_\_\_\_  
Edwin T. Lowndes, Executive Director

Date: \_\_\_\_\_, 2012

and the CONTRACTOR: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_, 2012

Tax ID Number : \_\_\_\_\_