

Request for Proposal
No. RFP-22-0218
Tenant Litigation Services

Issued By:
The Housing Authority of Kansas City, Missouri
3822 Summit Street
Kansas City, Missouri 64111

February 18, 2022

**REQUEST FOR PROPOSAL
RFP-22-0218**

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

REQUEST DATE: February 18, 2022

THIS IS NOT AN ORDER

Proposals Due:
March 18, 2022, 2:00 p.m. CDT

Amber Kash
Contract Specialist, OPC
HAKC Admin Office

Pre-Bid Conference:
No Pre-Bid

akash@hakc.org
Ph. (816) 968-4203
Fax (816) 968-4203

**PART ONE
INTRODUCTION AND BID STRUCTURE**

1. This is a request for proposal (RFP) and is not an offer to contract. Instead, this RFP seeks to establish a common framework within which a contract may be reached between the Proposer and the Housing Authority of Kansas City, Missouri (HAKC). Further, this RFP and your firm's response will be the basis for and be incorporated into any legal contract between HAKC and the successful bidder. Proposals submitted in response to the RFP shall represent a firm offer to contract with the HAKC on the terms and conditions described in such proposals. Each representation of fact and promise of future performance therein will be incorporated into the contract as a warranty or covenant.
2. **MISSION STATEMENT OF THE HOUSING AUTHORITY OF KANSAS CITY, MISSOURI:** The Mission of the Housing Authority of Kansas City, Missouri (HAKC) is to develop, rehabilitate and manage decent, safe and sanitary quality affordable housing in a manner that promotes equal opportunity, fair housing and the deconcentrating of race and poverty. In accomplishing this goal, HAKC is committed to maintaining its developments as affordable housing assets that can meet the needs of low-income households in the long term and serve as viable community resources promoting economic independence and self-sufficiency for its residents. The Housing Authority of Kansas City, Missouri is a municipal corporation and political subdivision of the State of Missouri 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 10,000 households

under the Housing Choice Voucher program. The Authority has an annual operating budget of \$220 million.

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

Part I Introduction and Proposal Structure

Part II Scope of Work Description and Terms

- i. Evaluation Criteria
- ii. Scope of Work Requirements
- iii. **Non-Collusive Affidavit**
- iv. **Notarized Release of Information**
- v. **Joint Venture Questionnaire**
- vi. **References**
- vii. **Statement of Qualifications**
- viii. HUD 5370-C General Conditions for Non-Construction
- ix. HUD 5369-B Instructions to Offerors for Non-Construction
- x. **HUD 5369-C Certification and Representation of Offerors for Non-Construction**
- xi. Sample of Professional Services Agreement
- xii. **Addendum to Engagement Agreement**
- xiii. **Price Proposal**

BOLD indicates forms required to be completed and returned with **every** bid submission.

Failure to provide the indicated forms, may cause your submission to be removed from consideration.

PART TWO

1. SCOPE OF SERVICES

The Housing Authority of Kansas City, Missouri (HAKC) is seeking proposals from qualified firms or individuals for the provision of small to medium size legal services in accordance with the specification in this Scope of Services. HAKC desires to retain a firm whose practice area primarily focuses on and/or includes robust Landlord/Tenant matters specializing in Public Housing and its participants within Jackson County Circuit Court.

2. TERM OF CONTRACT

The contract period shall be the date of issuance of the Notice to Proceed through a one (1) year term. At the sole option of HAKC, the contract may be extended up to four (4) times for one (1) additional year. Prices stated in the proposal shall be legally binding for the term of the contract, including renewal periods.

3. LAWYERS' PROFESSIONAL LIABILITY INSURANCE

The contractor must carry professional liability insurance with respect to the delivery of legal services. The contractor will agree to provide the HAKC with a copy of this certificate

4. LAWS TO BE OBSERVED

The contractor shall at all times observe and comply with all applicable State and Local laws, ordinances and regulations of the State or City governments as related to the services described herein.

5. ASSIGNMENT OF THE CONTRACT

The contractor shall not enter into any sub-contracts, retain consultants, or assign, transfer, convey or otherwise dispose of the ensuing contract or any or 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. PROVISION FOR CHANGES OR AMENDMENTS

If at any time HAKC desires to expand, alter or terminate a portion of the Scope of Services, as defined in the herein, the contract will be amended to reflect these changes at costs/deductions acceptable to both parties. HAKC shall provide thirty (30) days prior written notice to the contractor for any changes to the Scope of Services. The contractor shall not hold HAKC responsible for termination due to no fault of HAKC.

7. PRE-BID

There will be no pre-bid for this RFP.

8. PAYMENT

Invoices for payment shall be submitted on a monthly basis in accordance with the agreement and to be considered complete must include:

- A. Date of Service
- B. Agreement #
- C. Description of Work Performed
- D. Name of Tenant
- E. Name of Service Provider
- F. Cost

All original invoices must be sent to:

Accounts Payable
Housing Authority of Kansas City, MO
3822 Summit Street
Kansas City, MO 64111

Electronic copies of invoices may also be sent to ap@hkc.org.

Payment for all services shall be Net 30 days from the date of receipt of a completed invoice.

9. SUBMISSION REQUIREMENTS

Proposals must be received at the offices of the Housing Authority of Kansas City, MO **no later than 2:00 PM CDT, March 18, 2022**. Proposals must be addressed to the attention of Amber Kash, Office of Procurement and Contracts, Housing Authority of Kansas City, MO, 3822 Summit Street, Kansas City, MO 64111.

Technical Proposals shall be in a separate envelope and clearly marked "Tenant Litigation Services". Each response to this RFP must include **one (1) hard copy original, and five (5) bound copies** and be clearly identified as a response to the "Request for Proposals – RFP – 22-0218 – Tenant Litigation Services". Any Submission received later than **2:00 p.m. CDT, March 18, 2022** shall be considered non-responsive.

One (1) Price Proposal shall be submitted in a sealed, separate envelope, marked "Price Proposal" RFP-22-0218. Copies of Price Proposal are NOT to be included with Technical Proposal.

Pricing for services is to be submitted as a Flat Fee. In addition, provide price of services stated as an hourly fee describing additional services that may be provided as requested.

HAKC reserves the right to consider historic information and/or request additional information as part of the evaluation process. HAKC also reserves the right to reject any or all proposals; to make partial, multiple or no awards, postpone or cancel the bid process, and to waive minor technicalities in bids/proposals.

10. EVALUATION CRITERIA

Proposals will be evaluated in accordance with the following criteria:

10.1 Understanding the Proposal – 15 pts

Responsiveness to this Request for Proposal, the specifications and general provision and presentations, and the ability/willingness to sign a Housing Authority contract.

10.2 Experience with Public Housing – 15 pts

Experience and knowledge the attorney/law firm has with the Housing Authority of Kansas City, Missouri and/or other public housing programs and their participants.

10.3 References – 20 pts

Experience in providing professional services in the areas of law that relate to this solicitation, including but not limited to, a resume. Three (3) references required (see Attachment 1).

10.4 **Experience with the Court – 30 pts**

Experience of the attorney or law firm in dealing with Jackson County Circuit Court particularly in the area of tenant/landlord legal matters.

10.5 **Costs – 20 pts**

Cost of services to be provided as a flat fee for the services requested in this RFP. In addition, provide cost of services stated as an hourly fee describing additional services that may be provided as requested.

11. **EVALUATION PROCESS**

The HAKC will consider a proposal non-responsive when critical information is lacking or the submission represents a major deviation from the requirements of the RFP. Minor omissions or informalities may be waived at the sole option and discretion of the HAKC.

11.1 Responsive proposals will be evaluated in the following manner:

- a. An evaluation committee will review, rank-order and score all proposals individually on their technical merits and according to the criteria established in Section 10 of this RFP. The committee may contact respondent(s) if any clarification is needed on the proposal.
- b. Based on the rankings of the evaluation committee, respondents whose proposals are in the competitive range may be asked to participate in negotiations to discuss factors to ensure a mutual understanding of both HAKC's requirements and the bidder's proposal. Negotiations may be conducted either in person or by telephone.
However, HAKC may determine that negotiations are not necessary and make an award based on the initial proposals received in response to this solicitation.
- c. If negotiations are to occur the HAKC will establish a date and time for negotiations. Once negotiations have concluded, HAKC may request Best and Final offers. Best and Final offers will be submitted only once unless the Manager of Procurement and Contracts or General Counsel makes a written determination that is in HAKC's best interest to conduct additional negotiations or change HAKC's requirements and request another submission of best and final offers. After Best and Final offers are received, a final round of evaluations may occur.
- d. The responsive firm whose proposal is most advantageous to the HAKC may be recommended for award. If a contract is awarded, it will be awarded to the firm that provides HAKC with the best value and service based on the evaluation criteria.

12. QUESTIONS

Questions relating to the proposal content or procedures for submission must be submitted in writing to:

Amber Kash, Contract Specialist
FAX – 816-968-4203
EMAIL – akash@hakc.org

Deadline for questions is 5:00 pm CDT March 14, 2022.

13. 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 requirements.

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. In addition, failure to submit the required items listed above may be grounds for considering your bid non-responsive.

14. REQUIRED CONTENT AND SUBMITTAL FORMS

Respondents must submit the following documents with the proposal:

1. Information requested on evaluation criteria
2. Cost Proposal
3. Required Contract Documents (Attachments)
4. W-9 is required for entry into the Vendor System
5. References

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.

15. KEY DATES IN THIS RFP PROCESS ARE AS FOLLOWS

- RFP Issued: February 18, 2022
- Deadline for Questions: March 14, 2022
- Proposals Due: March 18, 2022

SCOPE OF SERVICES RFP-22-0218
Tenant Litigation Services

DESCRIPTION OF LEGAL SERVICES REQUIRED/ANTICIPATED

The HAKC seeks to obtain legal representation relating to its efforts to obtain possession of residential units when a resident either fails or refuses to vacate a unit or for emergency evictions when there is a threat to health and/or safety. HAKC will provide outside legal counsel with all necessary information to: 1) prepare and file the petition, 2) serve the petition upon the defendant, 3) appear at court, 4) present the case to the court, 5) prepare the case for trial, if necessary, 6) obtain the judgment, and 7) file the writ for eviction, if necessary. This service may involve pursuing money judgments against the tenant when there has been a failure to pay rent and when the residential unit has been damaged by the tenant and/or the tenant's family. These matters are typically not complex in nature and move quickly. HAKC estimates that there could be approximately 100 cases per year. HAKC General Counsel will handle 10-12 cases per year and all others will be sent to Outside legal counsel.

In the past, these landlord tenant actions have been filed as unlawful detainer actions in order to avoid the possibility that a resident could appear at court, tender the unpaid rent, and then ask that the matter be dismissed. In order to perform these services, the HAKC's outside legal counsel will be required to interact with the opposing counsel, the resident, HAKC property management staff, HAKC public safety personnel, HAKC's Legal Assistant, and with General counsel. Typically, the HAKC's Legal Assistant will be the primary point of contact with the HAKC in these matters. Currently outside legal services for the HAKC have been invoiced on a **flat fee** basis with respect to the attorney's fee due to the similarity of most of the cases that are assigned to outside legal counsel.

In situations where a case has been assigned to outside legal counsel that was not a normal landlord tenant case due to the atypical nature of the particular dispute (e.g., a tenant's request for a jury trial or some other situation where an inordinate amount of time is involved in the litigation) outside legal counsel may contact the HAKC legal department, explain the nature of the situation, and secure an agreement to bill the case on an **hourly basis**. Similarly, in the event that the HAKC would require legal advice and or opinions about landlord/tenant matters, outside of the context of a specific court filed case, service would be invoiced on an hourly

basis. Court costs, including the filing fee and the service of process fee shall be separately invoiced and reimbursed by the HAKC accordingly. The HAKC would anticipate that the successful proposal for legal services, in this instance, would provide for similar features.

HAKC provides this solicitation for a proposal from firms to provide small to medium size legal services to the HAKC, consistent with the above scope of work. Proposals will be solicited, and an award of a contract will be made to the firm whose proposal is most advantageous to the HAKC/s objectives, with price and other factors considered. This solicitation is provided pursuant to the HUD Directive relating to the procurement of such services and 2 CFR Part 200. In this regard the following factors will be considered by the HAKC and will be used in evaluating the bids for a subsequent award of a professional services contract.

The following factors must be addressed in your bid response and will be considered in determining the successful respondent:

1. A written statement from the attorney/law firm that describes the professional experience that the attorney/law firm possesses demonstrating experience in the areas of law that relate to this solicitation. This could include, but should not be limited to, a resume[s].
2. A written statement from the attorney/law firm that describes the experience and/or knowledge that the attorney/law firm possesses in relation with the Housing Authority of Kansas City, Missouri and/or public housing programs and participants.
3. A written statement from the attorney/law firm that describes the experience that the attorney/law firm possesses with the Jackson County Circuit Court.
4. A statement regarding the proposal for compensation for executing on money judgments and collecting monies on said judgments on behalf of the HAKC.
5. Cost of the services a) stated as a flat fee along with the description of the services provided; and b) stated as an hourly fee for atypical cases or upon specific request of the HAKC.

The successful respondent shall be required to sign the HAKC Professional Services Agreement. In addition, the contractor shall sign the addendum to the engagement agreement for legal services in accordance with the HUD Handbook, 1530.1, Rev-4.

ADDENDUM TO ENGAGEMENT AGREEMENT

1. The Housing Authority of Kansas City, Missouri (PHA) and [name of legal service individual or firm] (LSP) engaged to provide professional legal services to the PHA in connection with residential evictions and money judgments agree that the provisions of this Addendum to the Engagement Agreement are hereby incorporated into PHA and LSP's engagement agreement as if they had been set forth at length therein.

2. During the pendency of the legal services engagement, LSP shall not, without HUD approval, represent any officer or employee of PHA, in her/his individual capacity, in connection with potential civil liability or criminal conduct issues related to PHA operations.
3. LSP has an obligation not to, and shall not, interfere with, disrupt, or inappropriately delay or hinder any authorized monitoring, review, audit, or investigative activity of HUD (including the Office of Inspector General), the General Accounting Office (GAO), or the officers and employees of HUD and GAO. Any and all representation by LSP cannot be inconsistent with the foregoing obligation. Specifically, LSP shall not deny access to HUD, GAO, or the officers and employees of HUD and GAO, to PHA records in response to document demands by HUD, GAO, or the officers and employees of HUD and GAO, notwithstanding possible discovery privileges that would otherwise be available to PHA. HUD requires public housing agencies to provide HUD, GAO, or the officers and agents of HUD and GAO, with "full and free" access to all their books, documents, papers and records. See 24 CFR. §85.42(e)(1); HUD Handbook 7460.7 REV- 2, §1-2(8)(2).
4. PHA and LSP shall make available for inspection and copying, by HUD (including the Office of Inspector General), GAO, and the officers and employees of HUD and GAO, all invoices, detailed billing statements, and evidence of payment thereof relating to LSP's engagement. Such records constitute "PHA records" and are subject to section 3, above.
5. If HUD or PHA determines that LSP is violating any provision of this Addendum to the Engagement Agreement, it shall timely notify LSP of such violation. LSP will have 48 hours following its receipt of the notice of violation to cease and desist from further violation of the addendum. If LSP fails to adequately cure the noticed violation within 48 hours: (A) HUD, in its discretion, may demand that PHA terminate the professional legal services engagement for breach, or, henceforth, satisfy all costs associated with the engagement with non-Federal funds; and/or (B) PHA, in its discretion, may terminate the professional legal services engagement for breach. Additionally, HUD may sanction LSP pursuant to 24 CFR. Part 24.
6. Should any part, term, or provision of this Addendum to the Engagement Agreement be declared or determined by any court of competent jurisdiction to be illegal or invalid, the validity of the remaining parts, terms, and provisions shall not be affected.

Housing Authority of Kansas City, Missouri

Edwin Lowndes, Executive Director

Date

(Legal Services Name)

Name of LSP key partner

Date

Exhibit A

RIGHT OF REJECTION

The Respondent understands that the Owner reserves the right to reject any or all proposals, to waive minor informalities in any proposal, to award the contract in the Documents by mutual agreement with the successful respondent.

The Respondent agrees to deliver to the HAKC the Certification of Insurance and the signed HUD Form 5369-C.

Name of Firm

Street Address

Telephone Number

City, State, Zip Code

Federal Tax ID Number

Authorized Officer/Title

Date

Signature

Exhibit B

STATEMENT OF ACCEPTANCE AND EXCEPTIONS

The undersigned, by affixing his/her signature to this document, acknowledges that she/he has read and understands the terms, conditions, and other covenants as provided for in the Request for Proposals (RFP) and Exhibit A. The undersigned further agrees and understands that the proposal submitted herein is made under said terms, conditions, and other covenants, and shall abide by them, notwithstanding the exceptions listed herein. She/he states that she/he is an officer of the business entity named below or has power of attorney to bind said business to the terms, conditions, and other covenants provided in the aforementioned documents, and agrees to perform in accordance therewith the agreed upon services.

Name of firm: _____

Address: _____

Title: _____

Signature: _____

Printed Name: _____

Telephone Number: _____

Date: _____

If you wish to state any exceptions to the terms, conditions, and other covenants stated in this proposal document, then please specify herein, include additional pages as necessary.

(IMPORTANT: SOME EXCEPTIONS MAY BE CLASSIFIED AS NON-RESPONSIVE BY THE HAKC AND THE PROPOSAL MAY BE REJECTED)

Exhibit C

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 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
2. 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: _____

RFP 22-0218
ATTACHMENT - 1

REFERENCE FORM (Duplicate as needed – <u>3 Required*</u> for Similar Work)

For: _____

Name of Reference: _____

Address: _____

City: _____ State: _____ Zip: _____

Contact Person: _____

Phone: _____

Email: _____

Contract Value: _____

Dates of Contract: _____

Scope of Contract: _____

THIS SPACE FOR HAKC USE ONLY

***Failure to provide required references may result in removal from
consideration for contract award***

STATEMENT OF QUALIFICATIONS

All questions must be answered in a clear and comprehensive manner. Responses may be provided on separate attached sheet(s).

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? _____. Are you a Section 3 certified business? _____. If yes, please attach a copy of all certifications. Resident owned business? _____.

10. If so, provide the information below:

NAME	% of OWNERSHIP	RACE	SEX	TITLE

11. Are you registered to do business in the State of Missouri? _____.
(Enclose a copy)

12. Have you ever failed to complete any work awarded to you? _____ If so, when, where and why?

13. Have you ever defaulted on a contract? _____ If so, when, where and why?

14. List contracts held by your company that are similar in scope to this RFP. State the approximate cost for each, and the length of contract. Include the name, address, phone and email of each party.

NAME	ADDRESS	EMAIL	PHONE	START	COMPLETE

15. 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

16. Has the company ever been party to or involved in any complaints, litigation or regulatory investigation related to discrimination based upon race, nationality, sex, or religion? _____
_____ If so, give full details:

17. Social Security Number: _____

18. Federal I.D. Number: _____

19. Insurance Company: _____

Amount of Insurance: _____

Bonding Agent: _____

Amount of Bond: _____

Include a copy of a current insurance certificate.

**(A copy of the insurance certificate showing
the Housing Authority of Kansas City, Missouri as Additional Insured
will be required before a Notice to Proceed (NTP) will be issued)**

20. Are you certified by any other agencies? _____

Names of Agencies:

21. Please sign the following Authorization for Release of Information authorizing the HAKC to verify your references and all other information provided in your response.

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 _____)
) SS
COUNTY OF _____)

_____ 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 Statement of Occupation 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

General Conditions for Non-Construction Contracts Section I – (With or without Maintenance Work) U.S. Department of Housing and Urban Development

Office of Public and Indian Housing Office of Labor Relations OMB Approval No. 2577-0157 (exp. 1/31/2017) Public Reporting Burden for this collection of information is estimated to average 0.08 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

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

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

Section I - Clauses for All Non-Construction Contracts greater than \$100,000

1. Definitions

The following definitions are applicable to this contract:

- (a) "Authority or Housing Authority (HA)" means the Housing Authority.
- (b) "Contract" means the contract entered into between the Authority and the Contractor. It includes the contract form, the Certifications and Representations, these contract clauses, and the scope of work. It includes all formal changes to any of those documents by addendum, Change Order, or other modification.
- (c) "Contractor" means the person or other entity entering into the contract with the Authority to perform all of the work required under the contract.
- (d) "Day" means calendar days, unless otherwise stated.
- (e) "HUD" means the Secretary of Housing and Urban development, his delegates, successors, and assigns, and the officers and employees of the United States Department of Housing and Urban Development acting for and on behalf of the Secretary.

2. Changes

- (a) The HA may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.
- (b) If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the HA shall make an equitable adjustment in the not-to-exceed amount, the hourly

rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.

- (c) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if the HA decides that the facts justify it, the HA may receive and act upon a proposal submitted before final payment of the contract.
- (d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

3. Termination for Convenience and Default

- (a) The HA may terminate this contract in whole, or from time to time in part, for the HA's convenience or the failure of the Contractor to fulfill the contract obligations (default). The HA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to the HA all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.
- (b) If the termination is for the convenience of the HA, the HA shall be liable only for payment for services rendered before the effective date of the termination.
- (c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (default), the HA may (i) require the Contractor to deliver to it, in the manner and to the extent directed by the HA, any work as described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause, paragraph 2, above; (ii) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the HA; (iii) withhold any payments to the Contractor, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the HA by the Contractor.
- (d) If, after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the HA, and the Contractor shall be entitled to payment as described in paragraph (b) above.
- (e) Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

4. Examination and Retention of Contractor's Records

- (a) The HA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
- (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:
 - (i) appeals under the clause titled Disputes;
 - (ii) litigation or settlement of claims arising from the performance of this contract; or,
 - (iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

5. Rights in Data (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.

6. 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.

7. Disputes

- (a) All disputes arising under or relating to this contract, *except for disputes arising under clauses contained in Section III, Labor Standards Provisions*, including any claims for damages for the alleged breach there of 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 HA. A claim by the HA against the Contractor shall be subject to a written decision by the HA.
- (c) The HA shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HA's decision, shall notify the HA in writing that it takes exception to such decision, the decision shall be final and conclusive.
- (d) Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against the HA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HA that it submit a final voucher and release, whichever is earlier, then the HA's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.
- (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 the contract, and comply with any decision of the HA.

8. Contract Termination; Debarment

A breach of these Contract clauses may be grounds for termination of the Contract and for debarment or denial of participation in HUD programs as a Contractor and a subcontractor as provided in 24 CFR Part 24.

9. Assignment of Contract

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

10. Certificate and Release

Prior to final payment under this contract, or prior to settlement upon termination of this contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the HA a certificate and release, in a form acceptable to the HA, of all claims against the HA by the Contractor under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Contractor in stated amounts set forth therein.

11. Organizational Conflicts of Interest

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this contract and a contractor's organizational, financial, contractual or other interests are such that:
 - (i) Award of the contract may result in an unfair competitive advantage; or
 - (ii) The Contractor's objectivity in performing the contract work may be impaired.
- (b) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract or any task/delivery order under the contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The HA may, however, terminate the contract or task/delivery order for the convenience of the HA if it would be in the best interest of the HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the HA may terminate the contract for default.
- (d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

12. Inspection and Acceptance

- (a) The HA has the right to review, require correction, if necessary, and accept the work products produced by the Contractor. Such review(s) shall be carried out within 30 days so as to not impede the work of the Contractor. Any

- product of work shall be deemed accepted as submitted if the HA does not issue written comments and/or required corrections within 30 days from the date of receipt of such product from the Contractor.
- (b) The Contractor shall make any required corrections promptly at no additional charge and return a revised copy of the product to the HA within 7 days of notification or a later date if extended by the HA.
- (c) Failure by the Contractor to proceed with reasonable promptness to make necessary corrections shall be a default. If the Contractor's submission of corrected work remains unacceptable, the HA may terminate this contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

13. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit to arise there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

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

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

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal Action" means any of the following Federal actions:

- (i) The awarding of any Federal contract;
- (ii) The making of any Federal grant;
- (iii) The making of any Federal loan;
- (iv) The entering into of any cooperative agreement; and,
- (v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

- (i) An individual who is appointed to a position in the Government under title 5, U.S.C., including a position under a temporary appointment;

- (ii) A member of the uniformed services as defined in section 202, title 18, U.S.C.;
- (iii) A special Government employee as defined in section 202, title 18, U.S.C.; and,
- (iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, appendix 2.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or other Indian organization with respect to expenditures specifically permitted by other Federal law. "Recipient" includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, or cooperative agreement. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibition.

- (i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph (i) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, if the payment is for agency and legislative activities not directly related to a covered Federal action.

(b) For purposes of paragraph (b)(i)(1)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(c) The following agency and legislative liaison activities are permitted at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by subdivision (b)(ii)(1)(a) of this clause are permitted under this clause.

(2) Professional and technical services.

(a) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply in the case of-

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid,

proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(b) For purposes of subdivision (b)(ii)(2)(a) of clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by subdivisions (b)(ii)(2)(a)(i) and (ii) of this section are permitted under this clause.

(iii) Selling activities by independent sales representatives.

(c) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:

(i) Discussing with an agency (including individual demonstration) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and

(ii) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) Agreement. In accepting any contract, grant, cooperative agreement, or loan resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

(e) Penalties. Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(f) Cost Allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation (FAR), or OMB Circulars dealing with cost allowability for recipients of assistance agreements. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of FAR Part 31 or the relevant OMB Circulars.

16. Equal Employment Opportunity

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

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to (1) employment; (2) upgrading; (3) demotion; (4) transfer; (5) recruitment or recruitment advertising; (6) layoff or termination; (7) rates of pay or other forms of compensation; and (8) selection for training, including apprenticeship.
- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

17. Dissemination or Disclosure of Information

No information or material shall be disseminated or disclosed to the general public, the news media, or any person or organization without prior express written approval by the HA.

18. Contractor's Status

It is understood that the Contractor is an independent contractor and is not to be considered an employee of the HA, or assume any right, privilege or duties of an employee, and shall save harmless the HA and its employees from claims suits, actions and costs of every description resulting from the Contractor's activities on behalf of the HA in connection with this Agreement.

19. Other Contractors

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

20. Liens

The Contractor is prohibited from placing a lien on HA's property. This prohibition shall apply to all subcontractors.

21. 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.

22. 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.

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

Instructions to Offerors Non-Construction

1. Preparation of Offers

- (a) Offerors are expected to examine the statement of work, the proposed contract terms and conditions, and all instructions. Failure to do so will be at the offeror's risk.
- (b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the cover sheet and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the HA.
- (c) Offers for services other than those specified will not be considered.

2. Submission of Offers

- (a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation, and (2) showing the time specified for receipt, the solicitation; number, and the name and address of the offeror.
- (b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice.
- (c) Facsimile offers, modifications or withdrawals will not be considered unless authorized by the solicitation.

3. Amendments to Solicitations

- (a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.
- (b) Offerors shall acknowledge receipt of any amendments to this solicitation by:
 - (1) Signing and returning the amendment
 - (2) Identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer,
 - (3) Letter or telegram, or
 - (4) Facsimile, if facsimile offers are authorized in the solicitation. The HA/HUD must receive the acknowledgment by the time specified for receipt of offers.

4. Explanation to Prospective Offerors

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

5. Responsibility of Prospective Contractor

The HA shall award a contract only to a responsible prospective contractor who is able to perform successfully under the terms and conditions of the proposed contract. To

must –

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

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

6. Late Submissions, Modifications, and Withdrawal of Offers

- (a) Any offer received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it –
 - (1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
 - (2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or by facsimile, and it is determined by the HA/HUD that the late receipt was due solely to mishandling by the HA/HUD after receipt at the HA;
 - (3) Was sent by U.S. Postal Service Express Mail Next Day Service – Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term “working days” excludes weekends and U.S. Federal holidays; or
 - (4) Is the only offer received.
- (b) Any modification of an offer, except a modification resulting from the HA's request for “best and final” offer (if this solicitation is a request for proposals), is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.
- (c) A modification resulting from the HA's request for “best and final” offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the HA after receipt at the HA.

Previous edition is obsolete

- (d) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by the employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.
- (e) The only acceptable evidence to establish the time of receipt at the HA is the time/date stamp of HA on the offer wrapper or other documentary evidence of receipt maintained by the HA.
- (f) The only acceptable evidence to establish the data of mailing a late offer, modification, or withdrawal sent by Express Mail Next Day Service-post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.
- (g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the HA will be considered at any time it is received and may be accepted.
- (h) If this solicitation is a request for proposals, proposals may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before award. Proposals may be withdrawn in person by a offeror or its authorized representative if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award. If this solicitation is an invitation for bids, bids may be withdrawn at any time prior to bid opening.

7. Contract Award

- (a) The HA will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the HA, cost or price and other factors, specified elsewhere in this solicitation, considered.
- (b) The HA may:
 - (1) Reject any or all offers if such action is in the HA's interest,
 - (2) Accept other than the lowest offer,
 - (3) Waive informalities and minor irregularities in offers received, and (4) award more than one contract for all or part of the requirements stated.
- (c) If this solicitation is a request for proposals, the HA may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should

contain the offeror's best terms from a cost or price and technical standpoint.

- (d) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. If this solicitation is a request for proposals, before the offer's specified expiration time, the HA may accept an offer whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the HA.
- (e) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract.

8. Service of Protest

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

9. Offer Submission

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

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

(As described in the HA's IFB/RFP)

Certifications and Representations of Offerors

Non-Construction Contract

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This form includes clauses required by OMB's common rule on bidding/offering procedures, implemented by HUD in 24 CFR 85.36, and those requirements set forth in Executive Order 11625 for small, minority, women-owned businesses, and certifications for independent price determination, and conflict of interest.

The form is required for nonconstruction contracts awarded by Housing Agencies (HAs). The form is used by bidders/offerors to certify to the HA's Contracting Officer for contract compliance. If the form were not used, HAs would be unable to enforce their contracts. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

1. Contingent Fee Representation and Agreement

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

(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.

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

(c) Any misrepresentation by the bidder/offeror shall give the PHA the right to (1) terminate the resultant contract; (2) at its discretion, to deduct from contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or

(3) take other remedy pursuant to the contract.

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

The bidder/offeror 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 small business concern. "Women-owned," as used in this provision, means a small 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 enterprise which, pursuant to Executive Order 11625, is defined as a business which is at

least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least

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

51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are: (Check the block applicable to you)

Black Americans Asian Pacific Americans
 Hispanic Americans Asian Indian Americans
 Native Americans Hasidic Jewish Americans

3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

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

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

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

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

(1) Is the person in the bidder/offeror'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/offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offeror'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/offeror deletes or modifies subparagraph (a)2 above, the bidder/offeror must furnish with its bid/offer a signed statement setting forth in detail the circumstances of the disclosure.

4. Organizational Conflicts of Interest Certification

(a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed contract and a prospective contractor’s organizational, financial, contractual or other interest are such that:

(i) Award of the contract may result in an unfair competitive advantage;

(ii) The Contractor’s objectivity in performing the contract work may be impaired; or

(iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.

(b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract for the convenience of HA if it would be in the best interest of HA.

(c) In the event the Contractor was aware of an organizational conflict of interest before the award of this Contract and intentionally did not disclose the conflict to the HA, the HA may terminate the Contract for default.

(d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

5. Authorized Negotiators (RFPs only)

The offeror represents that the following persons are authorized to negotiate on its behalf with the PHA in connection with this request for proposals: (list names, titles, and telephone numbers of the authorized negotiators):

6. Conflict of Interest

In the absence of any actual or apparent conflict, the offeror, by submission of a proposal, hereby warrants that to the best of its knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement, as described in the clause in this solicitation titled “Organizational Conflict of Interest.”

7. Offeror's Signature

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

Signature & Date:

Typed or Printed Name:

Title:

THE FOLLOWING DOCUMENT IS A SAMPLE OF HAKC'S PROFESSIONAL SERVICE AGREEMENT

SERVICE AGREEMENT

Building Management Services – 3822 Summit Street, Kansas City, MO 64111.

Contractor:

Agreement No.

This **Agreement** is made this **day** of **April 2022** by and between, the **Housing Authority of Kansas City, Missouri, (HAKC)**, a Missouri Municipal Corporation, created pursuant to RSMo. §99.040, having its principal place of business at **3822 Summit Street, Kansas City, MO 64111**, and

1. DEFINITIONS

1.1 "HAKC" means the Housing Authority of Kansas City, Missouri, Board, Commissioners, Directors, Managers and employees.

1.2 "HUD" means the U.S. Department of Housing and Urban Development.

1.3 "**Agreement**" means this SERVICE AGREEMENT dated 2022 entered into between HAKC and Contractor. This **Agreement** also includes the following component parts/documents: 1) the Proposal submitted by the Contractor, in response to the solicitation, 2) the Scope of Services, 3) the Specifications, if any and 4) Form HUD 5369-C. "Agreement" also includes any written and signed changes to any of these documents, by Addendum, Change Order, or other written and signed modification.

1.4 "Contractor" means the person or other entity entering into this **Agreement** with HAKC to perform all of the Work required under this **Agreement**.

1.5 "Contracting Officer" means the authorized person who signed this **Agreement** for HAKC.

1.6 "Day" means a calendar day unless otherwise indicated.

1.7 "Default" means the failure of the Contractor to fulfill the contract obligations.

1.8 "Services" means the promises, tasks, responsibilities, and duties that Contractor promises to perform and deliver to HAKC as set forth in this **Agreement** and specifically described in the, **Scope of Services** and the **Contractor's Written Bid via email**.

1.9 "Work" means the Services performed by the Contractor pursuant to this **Agreement**.

2. TERM OF AGREEMENT

The term of this **Agreement** shall begin as of the date of the **Notice to Proceed and shall be for a one (1) year period. Start Date: April , 2022 through March , 2023 with the option to renew one time for a further one (1) year period.**

3.0 SERVICES

3.1 Pursuant to the terms of this **Agreement**, the Contractor shall perform the services as described in the **Scope of Contract Services**, including all written amendments to the **Scope of Contract Services** and the **Contractor's Written Bid via email** incorporated herein by this reference.

3.2 Unless otherwise specified in the **Scope of Contract Services**, the Contractor shall furnish all tools, material, labor, and equipment to perform the required services to be delivered under this **Agreement**. All work is to be completed free of defects in material, workmanship, and performed according to the **Scope of Contract Services** and specifications, if any.

3.3 The Contractor is acting at all times as an independent contractor.

3.4 The Contractor shall exercise sound business judgement in performing under the terms of this **Agreement** and shall comply with all applicable federal laws, state laws, HUD regulations, and HAKC directives, and policies.

3.5 The Contractor will send the Property Manager form of communication that lists all services performed at each property for the week upon completion. This communication is not considered the invoice. This is solely for the Property Manager to keep track of all services that have been conducted for the week when the actual invoice is received from the AP department.

4. PRICING, BILLING AND PAYMENT

4.1 HAKC agrees to pay, and Contractor agrees to accept as compensation for the performance of the Services, in accordance with the attached schedule of prices.

4.2 For purposes of billing for the performance of the Services performed under this **Agreement**, the Contractor shall submit weekly an original of each request for payment to HAKC's Accounts Payable. All requests for payment must contain the following information: Contractor's name, address, telephone number, and tax identification number, this **Agreement** number, description of the services performed at each service location and the signature of an authorized company official.

4.3 HAKC shall pay the Contractor within thirty (30) calendar days following receipt of the request(s) for payment, acceptance of the work, and all required documentation (i.e. all requests for payment must be signed by the HAKC designee(s) certifying acceptance of the work, confirmation of pricing, etc.)

5.0 PERSONNEL

5.1 The contact person representing the Contractor shall be Shari Miller. The Contractor shall not replace this contact person without the agreement of HAKC that the substitute person(s) is/are of equal or greater skill and experience. The contact person(s) representing the HAKC shall be Heather Snow.

5.2 The Contractor shall be responsible for the conduct and discipline of his employees. Each person

assigned to perform services under this **Agreement** must have sufficient knowledge, skill, and experience to perform properly the work assigned to them. Any employee, 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 job by the Contractor's point of contact at the written request of HAKC. Such removal is not cause for an extension of time in which to complete the work.

5.3 The Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by the Department of Labor Regulations found at 29 CFR 5.

5.4 The Contractor agrees to provide for HAKC's approval a list of subcontractors, if any, that will be used to perform the work. Said list of subcontractors shall be delivered to the HAKC prior to execution of this **Agreement**. However, regardless of HAKC's prior approval, Contractor shall be responsible for all actions and/or inactions by said subcontractors as they pertain to the Services performed under the terms of this **Agreement**.

6. RECORD KEEPING

The Contractor shall maintain at least one copy of any and all written changes, modifications, or amendments to the **Scope of Contract Services**, the specifications, or this **Agreement** that may be agreed to by the parties. These documents shall be made available to the HAKC for inspection and copying upon the request of the HAKC.

7. INSPECTION; ACCEPTANCE; LIENS

7.1 The HAKC shall review, require correction, if necessary, and accept the work produced by the Contractor so long as the work is performed consistent with the terms of this **Agreement**. Such review(s) shall be carried out within thirty (30) business days after submission of documents for approval so as not to impede the work of the Contractor.

7.2 The Contractor shall make any required corrections promptly and return a revised copy of the work to the HAKC within seven (7) calendar days of notification or a later date, if extended by the HAKC.

7.3 Failure by the Contractor to proceed with reasonable promptness and/or to make necessary corrections shall constitute a default under the terms of this **Agreement**.

7.4 The contractor is prohibited from placing a lien on the HAKC's property. This prohibition shall apply to all subcontractors.

8. CHANGES

8.1 HAKC may at any time, by written order agreed to by the Contractor, make changes within the **Scope of Contract Services** of this **Agreement** in the services to be performed.

8.2 If any such change causes an increase or decrease in the prices charged, the maximum amount of the **Agreement**, or the time required for performance of any part of the work under this **Agreement**, whether or not changed by the order, or otherwise affects the conditions of this **Agreement**, then HAKC shall make an equitable adjustment in the maximum amount, the price(s), the delivery schedule, or other affected terms and shall modify the **Agreement** accordingly.

8.3 The Contractor must assert its rights to an equitable adjustment under this provision within thirty (30) days from the date of receipt of the written order. However, if the HAKC decides that the facts justify it, the HAKC may receive and act upon a proposal submitted before final payment of the **Agreement**.

8.4 Failure to agree to any adjustment shall constitute a dispute under ¶12.0 Disputes. However, nothing in this provision shall excuse the Contractor from proceeding with the **Agreement**, as changed.

8.5 No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HAKC.

9. AGREEMENT MODIFICATIONS

9.1 Only the Contracting Officer has authority to modify any term or condition of this **Agreement** on behalf of the HAKC. Any modifications shall be agreed to by the parties in writing and signed by the Contracting Officer. The Contractor specifically agrees and understands that no verbal modifications are allowed to this **Agreement**.

9.2 The HAKC may modify the **Agreement** unilaterally under the following circumstances: (1) pursuant to a specific authorization as stated in the **Agreement** (e.g., Changes); or (2) for administrative matters which do not change the rights or responsibilities of the parties (e.g., change in HAKC's address). All other modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer.

10. DISSEMINATION OF INFORMATION; RETENTION OF RECORDS

10.1 The Contractor hereby agrees that no information or material in its possession shall be disseminated or disclosed to the general public, the news media or any person or organization, without the prior expressed written approval of the HAKC.

10.2 The HAKC, HUD, or the Comptroller General of the United States, or any of their duly authorized representatives shall, for three (3) years after final payment under this **Agreement**, 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 **Agreement** for the purpose of performing audits, examinations, excerpts, and transcriptions.

10.3 The Contractor agrees to include in first-tier subcontracts a provision substantially the same as ¶10.2. "Subcontract", as used in this provision, means an agreement entered into between the Contractor and another entity to perform a portion of the Work required under the terms of this **Agreement**, excluding any such subcontracts.

10.4 The periods of access and examination in ¶10.2 and ¶10.3 for records relating to (1) appeals under ¶12.0 Disputes, (2) litigation or settlement of claims arising from the performance of services required under the terms of this **Agreement**, or (3) costs and expenses of this **Agreement** to which the HAKC, HUD, or the Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

11 LIQUIDATED DAMAGES (this section has been removed)

12. DISPUTES

12.1 All disputes arising under or relating to this **Agreement**, including any claims for damages for the alleged breach thereof, which are not disposed of by agreement, shall be resolved under this provision.

12.2 All claims by the Contractor shall be made in writing and submitted to the HAKC. A claim by the HAKC against the Contractor shall be made by a written decision by the HAKC.

12.3 The HAKC shall, with reasonable promptness but in no event more than thirty (30) days, render a decision concerning any claim hereunder. The Contractor has thirty (30) days after receipt of the HAKC decision to notify the HAKC in writing that it objects to such decision. After that timeframe the decision shall be final and conclusive.

12.4 Provided the Contractor has: 1). Given the notice to HAKC within the time stated in ¶12.3 above objecting to HAKC's decision and 2). Brought suit against HAKC not later than one (1) year after receipt of final payment, or if final payment has not been made, not later than one (1) year after the Contractor has had a reasonable time to respond to a written request by HAKC that it submit a final invoice, whichever is earlier, then HAKC's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction consistent with paragraph 27.1.

12.5 The Contractor shall proceed diligently with the performance of the services required under this **Agreement**, pending final resolution of any request for relief, claim, appeal, or action arising under the **Agreement**, and shall comply with the decision of the HAKC.

13. TERMINATION AND DEFAULT

13.1 This **Agreement** will terminate immediately if the Contractor becomes ineligible to contract with HUD under applicable laws and regulations.

13.2 The HAKC may terminate this **Agreement** in whole, or in part, at the convenience of the HAKC or for the failure of the Contractor to fulfill its obligations by default. The HAKC shall terminate this **Agreement** by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice the Contractor shall: (1) immediately discontinue all services affected, unless the notice directs otherwise and (2) deliver to HAKC all information, reports, papers, and other materials accumulated or generated in performing this **Agreement**, whether completed or in process.

13.3 If the termination is for the convenience of the HAKC, and is in whole, the HAKC shall be liable only for payment for services rendered before the effective date of the termination. If the termination is in part, the HAKC shall be liable for payment for services rendered before termination, and compensation for the remainder of the **Agreement** not terminated shall be equitably adjusted as agreed to by the parties at a rate not to exceed the ratio of the remaining services to the original **Agreement**.

13.4 If the termination is due to the failure of the Contractor to perform its obligations under this **Agreement** by default, the HAKC may require the Contractor to deliver, in the manner and to the extent directed by the HAKC, any work as described in ¶12.2. The Contractor's compensation shall be determined in accordance with ¶8.0 CHANGES TO SCOPE OF WORK. The HAKC may take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the HAKC in excess of the **Agreement** balance. HAKC may withhold payments to the Contractor, for the purposes of set-off or partial payment, as the case may be, of amounts owed to the HAKC by the Contractor.

13.5 If, after termination for failure to fulfill its obligations by default, it is determined that the Contractor had not failed, said termination shall be deemed to have been for the convenience of the HAKC, and the Contractor shall be entitled to payment as described in ¶ 12.3.

13.6 Upon the termination of this **Agreement** for any reason, the Contractor shall be obligated to cooperate with the HAKC so that a smooth transition of responsibilities, including immediate delivery to the HAKC, or its designee, all files, papers and records related to the Contractor's performance of this **Agreement**.

13.7 Any disputes with regard to this clause are expressly subject to the terms of ¶12.0 Disputes.

13.8 S&D Management has the option to terminate this contract upon providing a thirty (30) day written notice.

14. ORGANIZATIONAL CONFLICTS OF INTEREST

14.1 The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest, defined as a situation in which the nature of work under this Agreement and a the Contractor's organizational, financial, contractual or other interests are such that:

14.1.1 Award of the **Agreement** may result in an unfair competitive advantage; or

14.1.2 The Contractor's objectivity in performing the services required under the **Agreement** may be impaired.

14.2 The Contractor agrees that after award of this **Agreement**, it discovers an organizational conflict of interest the Contractor shall make an immediate and full disclosure in writing to the Contracting Officer, which shall include a description of the action, which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The HAKC may, however, terminate the **Agreement** for the convenience of the HAKC if it deems such termination is in the best interest of the HAKC.

14.3 In the event the Contractor was aware of an organizational conflict of interest before the award of this **Agreement** and intentionally did not disclose the conflict to the Contracting Officer, then HAKC may terminate this **Agreement** for default.

14.4 The provisions of these paragraphs shall be included in all subcontracts and consulting agreements, if any, wherein the work to be performed is similar to the service provided by the Contractor. The Contractor shall include in all such subcontracts and consulting agreements, any and all provisions necessary to eliminate or neutralize conflicts of interests.

15. INDEMNIFY AND HOLD HARMLESS

15.1 The Contractor agrees to indemnify and hold harmless the HAKC, it'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; 1.) Any act or omission by or on behalf of the Contractor outside the scope of this **Agreement**, and 2) Any act or omission determined to constitute negligence, recklessness, or willful misconduct by the Contractor or the Contractor's agents, employees, representatives, and assigns in the performance of this **Agreement**.

16. FORCE MAJEURE

16.1 Either party may be excused for any delays or default resulting from circumstances beyond its control, including without limitation, riot, war, fire, act of God or other casualty beyond its control.

17. STANDARD OF CONDUCT; QUALIFICATIONS

17.1 The provisions of 24 Code of Federal Regulations 85 are applicable to this **Agreement** and govern the Contractor's standard of conduct and qualifications. A copy of this regulation is available upon request.

18. ASSIGNMENT OF AGREEMENT

18.1 The Contractor shall not assign or transfer any interest in this **Agreement** except claims for monies due or to become due from the HAKC under this **Agreement** may be assigned to a bank, trust company, or other financial institution. If the Contractor is a partnership, this **Agreement** shall inure to the benefit of the surviving or remaining member(s) of such partnership approved by the HAKC.

19. INTEREST OF MEMBERS OF CONGRESS

19.1 No member or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this **Agreement** or to any benefit to arise there from. This provision shall not be construed to extend to this **Agreement** if made with a corporation for its general benefit.

20. INTEREST OF MEMBERS, OFFICERS OR EMPLOYEES AND FORMER MEMBERS, OFFICERS OR EMPLOYEES

20.1 No member, officer, or employee of the HAKC, no member of the governing body of the locality in which the project is situated, no member of the governing body in which the HAKC was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall during his or her tenure, or for one (1) year thereafter, have any interest, direct or indirect, in this **Agreement** or the proceeds thereof.

21. NONDISCRIMINATION

21.1 The Contractor agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. The Contractor shall take affirmative action in this regard, posting such notice in conspicuous places and placing such notice in all solicitations or advertisements for employees. The Contractor shall advise each labor union with which it has an agreement, of the Contractor's commitment to nondiscrimination.

22. SECTION 3

22.1 The work to be performed under this contract is subject to the requirement 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 to 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 housing assistance.

22.2 The parties to this contract agree to comply with HUD 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.

22.3 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 a 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.

22.4 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 the 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.

22.5 The Contractor will certify that any vacant employment positions, including training positions will be 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.

22.6 Noncompliance with HUD regulations in 24 CFR Part 135 may result in sanctions; termination of this contract for default and debarment or suspension from future HUD funded contracts.

23. OTHER REGULATORY REQUIREMENTS

23.1 The following requirements (full text copies available from the HAKC contracting office) are incorporated by HAKC:

1. Executive Order 11246, Equal Employment Opportunity and 41 CFR 60 for contracts in excess of \$10,000.00
2. Anti-Kickback Act 18 USC 874 and 29 CFR 3.

24. NOTICES

24.1 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 when delivered, by whatever means, to the party designated to receive such notice, or on the date following the day sent by overnight courier, or on the third business day after the same is sent by United States Postal Service, postage and charges prepaid, directed to the addresses noted above, or to such other or additional addresses as either party might designate by written notice to the other party. Electronic facsimile transmission is permitted, but only if a signed original is concurrently mailed first class in the United States postal service as provided herein.

25. COUNTERPARTS

25.1 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 a counterpart of this document has been executed, by both parties and a copy thereof delivered to the other party to this **Agreement**.

26.1 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 wavier 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, which is barred by the doctrines of sovereign or governmental immunity by whatever name, as set forth in RSMo 537.600,et.seq. This policy is not intended to act as a wavier of any defense available to the insured by statute or a common-law.

27. CHOICE OF LAW/CHOICE OF FORUM

27.1 The parties agree that the laws of the State of Missouri and any applicable federal statutes, laws, and regulations shall govern this **Agreement**. The parties further agree that a court of competent jurisdiction within Jackson County, Missouri, shall have exclusive jurisdiction over all causes of action asserted by or against the HAKC that arise out of or relate to this **Agreement**.

28. ENTIRE AGREEMENT; SEVERABILITY

28.1 This **Agreement**, and the materials incorporated herein by reference, including any exhibits and attachments, constitutes the entire agreement between the parties. There are no agreements, understandings, warranties or representations between the parties except as set forth herein. No change or modification of this **Agreement** shall be valid unless in writing and signed by the Contracting Officer of the HAKC. 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.

29. INCORPORATION OF HUD FORM 5369-C and 5370-C

29.1This **Agreement** shall also include HUD Forms 5369-C and 5370-C, attached hereto and incorporated herein by reference. In the event of a contradiction or inconsistency between any term or provision of this **Agreement** (or any of its component parts) and HUD Form 5369-C and 5370-C, the parties agree that HUD Form 5369-C and 5370-C, shall govern and control with respect to the subject term or provision.

IN WITNESS WHEREOF, EACH PARTY HAS SIGNED OR CAUSED THIS INSTRUMENT TO BE SIGNED ON ITS BEHALF BY ITS DULY AUTHORIZED AGENT.

**HOUSING AUTHORITY OF
KANSAS CITY, MISSOURI**

By: _____ Date: _____
Name: **Edwin T. Lowndes**
Title: **Executive Director**

Address: 3822 Summit Street
Kansas City, Missouri 64111

CONTRACTOR: _____

By: _____ Date: _____

Printed Name: _____ **Federal Tax I.D. Number:** _____

Title: _____

Address: _____

Documents included with this contract:
Scope of work

ADDENDUM TO ENGAGEMENT AGREEMENT

1. The Housing Authority of Kansas City, Missouri (PHA) and [name of legal service individual or firm] (LSP) engaged to provide professional legal services to the PHA in connection with [briefly and precisely describe the nature, scope and limits of the legal services to be provided by the LSP] agree that the provisions of this Addendum to the Engagement Agreement are hereby incorporated into PHA and LSP's engagement agreement as if they had been set forth at length therein.
2. During the pendency of the legal services engagement, LSP shall not, without HUD approval, represent any officer or employee of PHA, in her/his individual capacity, in connection with potential civil liability or criminal conduct issues related to PHA operations.
3. LSP has an obligation not to, and shall not, interfere with, disrupt, or inappropriately delay or hinder any authorized monitoring, review, audit, or investigative activity of HUD (including the Office of Inspector General), the General Accounting Office (GAO), or the officers and employees of HUD and GAO. Any and all representation by LSP cannot be inconsistent with the foregoing obligation. Specifically, LSP shall not deny access to HUD, GAO, or the officers and employees of HUD and GAO, to PHA records in response to document demands by HUD, GAO, or the officers and employees of HUD and GAO, notwithstanding possible discovery privileges that would otherwise be available to PHA. HUD requires public housing agencies to provide HUD, GAO, or the officers and agents of HUD and GAO, with "full and free" access to all their books, documents, papers and records. See 24 CFR. §85.42(e)(1); HUD Handbook 7460.7 REV-2, §1-2(B)(2).
4. PHA and LSP shall make available for inspection and copying, by HUD (including the Office of Inspector General), GAO, and the officers and employees of HUD and GAO, all invoices, detailed billing statements, and evidence of payment thereof relating to LSP's engagement. Such records constitute "PHA records" and are subject to section 3, above.
5. If HUD or PHA determines that LSP is violating any provision of this Addendum to the Engagement Agreement, it shall timely notify LSP of such violation. LSP will have 48 hours following it's receipt of the notice of violation to cease and desist from further violation of the addendum. If LSP fails to adequately cure the noticed violation within 48 hours: (A) HUD, in its discretion, may demand that PHA terminate the professional legal services engagement for breach, or, henceforth, satisfy all costs associated with the engagement with non-Federal funds; and/or (B) PHA, in its discretion, may terminate the professional legal services engagement for breach. Additionally, HUD may sanction LSP pursuant to 24 CFR. Part 24.
6. Should any part, term, or provision of this Addendum to the Engagement Agreement be declared or determined by any court of competent jurisdiction to be illegal or invalid, the validity of the remaining parts, terms, and provisions shall not be affected.

Housing Authority of Kansas City, Missouri

Edwin Lowndes, Executive Director

Date

(Legal Services Name)

Name of LSP key partner

Date

