



## **INVITATION FOR BIDS IFB #24-1121**

**Dunbar Catwalk Replacement**

**3392 Colorado Ave, KCMO 64128**

Date: November 21, 2024

Contact: Micah Beaman  
Contract Specialist

Telephone: (816) 968-4260

Email: [mbeaman@hakc.org](mailto:mbeaman@hakc.org)

## INVITATION FOR BIDS

IFB #24-1121

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

REQUEST DATE: November 21, 2024

THIS IS NOT AN ORDER

**Bid Due Date:**  
December 20, 2024

**Pre-Bid Meeting**  
December 4, 2024  
10:00 a.m. Central Time at  
3392 Colorado  
KCMO, 64128

Micah Beaman  
Contract Specialist  
[mbeaman@hakc.org](mailto:mbeaman@hakc.org)  
Ph. (816) 968-4260

### PART ONE INTRODUCTION AND BID STRUCTURE

1. The Housing Authority of Kansas City, Missouri (HAKC) is organized under the laws of the State of Missouri. It owns and operates over 1700 units of conventional public housing in multifamily and single-family sites through the city and provides rental assistance subsidies to approximately 7500 households under the Section 8 Housing Assistance Payment Program. The agency has an annual operating budget of \$20 million. Receives approximately \$3.5 million in annual Capitol Fund program allocations and maintains funding awards for the HOPE VI and Public Housing Development Programs. HAKC also funds and manages a variety of social service and economic development programs for its residents.
2. HAKC is requesting bids from qualified contractors to do Catwalk Replacement at the 3392 Colorado Ave KCMO 64128
3. An onsite **Pre-bid meeting** for this project will be held on **December 4, 2024 at 10:00 am at 3392 Colorado Ave KCMO 64128**. All interested bidders are requested to attend the pre-bid meeting for an onsite walkthrough and review of the scope of work requirements. Please upon arrival park on the street or at the designated visitor spaces.

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**SECTION 1  
PROPOSAL CALENDAR**

RFP Advertised and Issued ..... November 21, 2024

Pre-Bid Conference ..... December 4, 2024  
..... 10:00a.m. Central

Review Scope of Work and Walkthrough of Service Location:

location - 3392 Colorado Ave  
Kansas City, MO 64128

Questions, Comments and Requests for Clarifications Due to HAKC ..... December 9,2024  
..... by 1:00 p.m. Central

HAKC'S Response to Questions, Comments and Requests for Clarification ..... December 11, 2024

IFB Closing ..... December 20, 2024  
by 2:00 p.m. Central

Public Bid Opening – please Email [mbeaman@hakc.org](mailto:mbeaman@hakc.org) for meeting invitation ..... December 20, 2024 at 2:30 pm

Contract Award/Notice to Proceed ..... January 2025

## SECTION 2 DOCUMENTS

Below is a list of documents provided within this IFB, **BOLD** indicates forms required to be completed and submitted with the proposal:

- a. **Notarized Non-Collusive Affidavit**
- b. **References**
- c. **Core Employees**
- d. **Listing of Proposed Sub-Contractors**
- e. **Statement of Qualifications**
- f. **Statement of Release of Information Authorization**
- g. **Joint Venture Questionnaire**
- h. **Bid Form Pages 1, 2, & 3**
- i. **Bid Bond**
- j. **HUD Form 5369 Instructions to Bidders**
- k. **Completed and Signed HUD Form 5369A**
- l. **HUD Form 5370 General Conditions**
- m. **Registration with SAM.GOV this this registration allows you to submit Bids for government contracts/**

**Failure to provide the indicated forms, will cause your submission to be removed from consideration for award. All bid packages will be in a sealed envelope. All bid packages that are not sealed will not be considered for contract award.**

**NOTE FOR PROJECTS EXCEEDING \$50,000:** The bidder shall complete and submit his/her bid with the ***Form HUD-2530, "Previous Participation Certificate"***. If the successful bidder does not submit the certificate with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the certificate by that date may render the bid nonresponsive. No contract award will be made without a properly executed certificate.

#### 4. Sealed Bid Selection Criteria

A firm fixed-price contract is awarded to the lowest responsible bidder whose bid, is conforming with all material terms and conditions of the invitation for bids, is the lowest in price.

**PART TWO**  
**BID SPECIFICATIONS**

1. The Housing Authority of Kansas City, Missouri (HAKC) is seeking bids from qualified contractors for Dunbar Catwalk Replacement at 3392 Colorado Ave., in accordance with the Scope of Work outlined in this IFB. The work is to be completed within 120 calendar days from the Notice to Proceed.

The contractor shall be assessed **Liquidated Damages of \$200.00** for each workday in excess of this allotted time for completion. Exceptions may be granted for delays caused by Owner or modifications to the Scope of Work.

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

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

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

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

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

As it relates to the foregoing paragraph, all directions to the contractor, and all changes or amendments to the project, between the contractor and the HAKC must come through the Project Manager, Brad Valentine at 816-564-5288 or [Bvalentine@hakc.org](mailto:Bvalentine@hakc.org). The HAKC will not be responsible for payment for any change(s) not authorized in advance, by the Project Manager.

## 7. SECTION 3 REQUIREMENTS

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

Section 3 benchmarks are as follows: 25% of the total project hours are to be worked by Section 3 workers. 5% of the total project hours are to be worked by Targeted Section 3 workers as reference see link for Section 3 FAQ's: <https://www.hudexchange.info/search/?dsp=&ct=FAQs&collection=&q=section+3+faq> If these goals are not met, the contractor must show qualitative efforts to locate and hire Section 3 workers. Refer to 24, CFR 75.15b for examples of qualitative efforts.

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 FAQ" link for definitions as well as additional information on compliance with Section 3 requirement.

<https://www.hudexchange.info/search/?dsp=&ct=FAQs&collection=&q=section+3+faq>

For additional questions please contact HAKC's Section 3 Coordinator: Steven Tucker (816-968-4176, [Stucker@hakc.org](mailto:Stucker@hakc.org)).

## 8. INSURANCE, BONDING AND HOLD HARMLESS AGREEMENT

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

### Insurance

#### *Liability/Bodily Injury*

##### General:

- a) Three million dollars (\$3,000,000) for all claims arising out of a single occurrence.
- b) Five hundred thousand dollars (\$500,000) for any person in a single accident or occurrence.

##### *Property Damage*

- c) Five hundred thousand dollars (\$500,000) for each occurrence.

##### Auto:

- d) Five hundred thousand dollars (\$500,000) each person
- e) Five hundred thousand dollars (\$500,000) each occurrence

##### *Property Damage*

- f) Five hundred thousand dollars (\$500,000) for each occurrence

##### Worker's Compensation

- g) Policy shall contain limits  $\geq$  the policy limits required by state or federal law, and not less than: Five hundred thousand dollars (\$500,000) per accident. In addition, the contractor agrees that it will indemnify and hold HAKC harmless for any acts, including acts of negligence, on the part of the contractor's agents or employees and from any and all claims on or about the premises resulting from the acts, including acts of negligence, of the contractor, its employees, or agents. The contractor shall investigate and furnish HAKC with full reports on all accidents, claims and potential claims for damages relating to the services provided under this contract, and will cooperate fully with HAKC and its' agents in connection with all claims

### **Bonding**

#### **A bid submission of \$50,000.00 or higher must be accompanied by a negotiable bid guarantee (Bid Bond) of 5% of the amount of the bid.**

As a "public entity" seeking to enter into a written contract with a "Contractor" for a public works project as those terms are defined in Section 107.170 RSMo., estimated to meet or exceed the sum of fifty thousand (\$50,000) dollars, the HAKC must require the Contractor to furnish to HAKC a **Payment Bond** with good and sufficient sureties in the amount of **one hundred percent (100%)** of the total cost of the contract and such bond, among other conditions, shall be conditioned for the payment of any and all materials, incorporated, consumed, or used in connection with the construction of such work, and all insurance premiums, both for compensation, and for all other kinds of insurance, said work, and for all labor performed in such work whether by subcontractor or otherwise. As an additional condition of the contract the Contractor shall also furnish to HAKC a **Performance Bond** with good and sufficient sureties in the amount of **one hundred percent (100%)** of the total cost of the contract whereby said surety shall, among other things, insure for the completion of all work that is the subject of the contract. All bonds executed and furnished pursuant to this contract shall be deemed to contain the requirements and conditions set out within Section 107.170 RSMo., regardless of whether the same be set forth in said bond, or of any terms or provisions of the said bond to the contrary notwithstanding.

## 9. **PAYMENT**

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

- a) Certify that no additional staff were hired in order to complete this project. This will be verified by submission of the payroll sheets (if Davis Bacon applies).
- b) If additional staff is to be hired, contractor must advertise in the newspaper of record for the area, and demonstrate that additional contacts were made to locate qualified Section 3 residents. Sources for locating Section 3 residents include the individual development where the work is to be performed; other HAKC developments; HAKC's Department of Resident Services; the City of Kansas City, Missouri; etc.
- c) If no qualified Section 3 residents are available, the contractor must show qualitative efforts to locate and hire Section 3 residents.
- d) Meet Section 3 benchmarks: 25% of total project hours are to be worked by Section 3 workers. 5% of total project hours are to be worked by Targeted Section 3 workers (see FAQ for definitions). If these goals are not met, the contractor must show qualitative efforts to locate and hire section 3 workers.
- e) For additional information, contractors may refer to 24, CFR, Sec 75.
- f) Contractor shall certify that all employees of the contractor are United States citizens or have work visas to work in the United States. Copies of the work visas shall be submitted with the first payroll sheets submitted to Contracts requesting payment.

The contractor shall invoice per the firm, fixed prices indicated on the Bid Form. The firm, fixed prices shall be legally binding for the entire term of the contract. The Project Manager must approve all invoices prior to payment.



Invoices/Payment Certification Packets for contracts over \$2,000.00 which require Davis-Bacon wages, must have “Payroll Form WH-347”.

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

The contractor shall submit Payroll (WH-347) and any changes to core employees to:

Steven Tucker  
Section 3 Coordinator  
3822 Summit Street  
Kansas City, MO 64111  
[Stucker@hkc.org](mailto:Stucker@hkc.org)

The contractor shall submit all requests for payment under this contract to:

Brad Valentine,  
Project Manager  
3822 Summit Street  
Kansas City, MO 64111  
[Bvalentine@hkc.org](mailto:Bvalentine@hkc.org)

10. QUESTIONS

Questions relating to the bid content or procedures for submission must be submitted in writing via email no later than **10:00 am, December 9, 2024** to:

Micah Beaman at [mbeaman@hkc.org](mailto:mbeaman@hkc.org) or can be reached at (816) 968-4260.

11. PRICING

Pricing of a bid shall constitute a firm offer to the HAKC for one hundred twenty (120) days from the date of closing. This IFB does not commit the HAKC to award a contract or to pay any cost incurred in preparation of a submittal. Bidders shall read and understand the requirements of this Invitation for Bid.

12. SIGNAGE

Contractor is required to POST SIGNAGE at a conspicuous location on the job site from the day the job starts thru its completion. The signage board can be 36" x 42" x 3/4" thick plywood with 2" wide trim around. The Contractor shall secure the following HUD documents on the Signage and secure the Signage Post to the ground with a 2" wide pointed stake.

- Contractor's Company Name in large and bold print.
- Davis-Bacon Wage Determination sheets issued for this project.  
(Post entire decision sheets on the signage)
- Current POSTER for EMPLOYEE RIGHTS UNDER THE DAVIS-BACON Act for Laborers and Mechanics.
- The scope of work issued is required to be posted on the board throughout project

14. SUBMITTAL INSTRUCTIONS

Bid submissions must be received with all required documents/attachments as stated in the IFB **no later than 2:00 p.m. on December 20, 2024**. Bids may be mailed, or hand delivered to:

Housing Authority of Kansas City, MO  
Attention: Micah Beaman, Procurement Dept.  
3822 Summit Street  
Kansas City, Missouri 64106

The Envelope should be clearly marked with “**IFB #24-1121** Dunbar Catwalk Replacement for 3392 Colorado Ave, KCMO,64128.

A public bid opening will be held at 2:30pm on December 20, 2024, for an invite to attend to the sealed bid opening, please contact Micah Beaman at [mbeaman@hkc.org](mailto:mbeaman@hkc.org).

Bids received after the time specified shall not be considered for award. Bids received via facsimile (fax), or electronic mail (e-mail) shall not be considered. Bids not meeting specified delivery and method of submittal will not be opened nor considered responsive.

When a contractor is declared the successful bidder, and at the time the contract is signed, if applicable, they may be asked to certify that:

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

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

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

13. PREVAILING WAGE RATES

This is a prevailing wage job under Federal Wage rates (Davis Bacon). Awarded Contractor shall provide certified payrolls (WH-347) to HAKC with payment application and/or invoice for review and approval prior to processing of payment requested.

Applicable Davis Bacon wage rate documents are attached for reference and use.

Prevailing Wage Rate

"General Decision Number: MO20230063 11/10/2023

Superseded General Decision Number: MO20220063

State: Missouri

Construction Type: Residential

County: Jackson County in Missouri.

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

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:       	. Executive Order 14026 generally applies to the contract.  . The contractor must pay all covered workers at least \$16.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2023.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:       	. Executive Order 13658 generally applies to the contract.  . The contractor must pay all covered workers at least \$12.15 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2023.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/06/2023
1	01/13/2023
2	01/20/2023
3	04/14/2023
4	06/16/2023
5	06/30/2023
6	09/08/2023
7	10/13/2023
8	11/10/2023

BRMO0015-023 04/01/2022

	Rates	Fringes
BRICKLAYER.....	\$ 38.80	20.54

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 CARP0005-011 05/01/2023

	Rates	Fringes
CARPENTER.....	\$ 34.48	21.25

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 \* ELEC0124-001 08/28/2023

	Rates	Fringes
ELECTRICIAN.....	\$ 47.37	25.89

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 ENGI0101-031 04/01/2020

	Rates	Fringes
POWER EQUIPMENT OPERATOR:		
Backhoe/Excavator.....	\$ 39.74	20.10
Roller.....	\$ 39.74	20.10

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 LABO0264-004 04/01/2020

Rates	Fringes
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LABORER

Mason Tender - Brick.....\$ 30.00 15.70

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PAIN0003-021 04/01/2019

Rates Fringes

PAINTER

Brush and Roller.....\$ 21.10 12.50

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PLUM0008-018 06/01/2023

Rates Fringes

PLUMBER.....\$ 54.28 23.79

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ROOF0020-009 06/01/2023

Rates Fringes

ROOFER.....\$ 37.60 21.64

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SFMO0314-004 10/01/2023

PORTION OF COUNTY WITHIN A 30 MILE RADIUS OF THE INTERSECTION  
OF PERSHING & BROADWAY IN KANSAS CITY, MO

Rates Fringes

SPRINKLER FITTER (Fire  
Sprinklers).....\$ 43.04 24.35

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SFMO0669-005 04/01/2023

REMAINDER OF COUNTY

Rates Fringes

SPRINKLER FITTER (Fire  
Sprinklers).....\$ 41.00 26.35

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SHEE0002-028 07/01/2011

Rates Fringes

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

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\* SUMO2011-007 08/11/2011

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 16.00 **	0.00
LABORER: Common or General.....	\$ 11.00 **	0.00

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

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\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$16.20) or 13658 (\$12.15). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

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

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

(weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date

for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

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

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material,



etc.) that the requestor considers relevant to the issue.

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

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

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

## Scope of work

DUNBAR GARDENS  
ELEVATED COURTYARD WALKWAYS RENOVATION

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DIVISION 00: - PROCUREMENT AND CONTRACTING  
REQUIREMENTS

-REFER TO HAKC DOCUMENTS

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DOCUMENTATION

SECTION 01 33 00 -SUBMITTAL PROCEDURES

SECTION 01 73 10 -CUTTING AND PATCHING

SECTION 01 73 20 -SELECTIVE DEMOLITION

SECTION 01 77 00 -CLOSEOUT PROCEDURES

### **DIVISION 03: - CONCRETE**

SECTION 03 30 00 -CAST IN PLACE CONCRETE

### **DIVISION 05: - METALS**

SECTION 05 12 00 -STRUCTURAL STEEL

SECTION 05 31 00 - METAL DECK

SECTION 05 73 00 -DECORATIVE METAL RAILINGS

**Please click link below for full scope of  
work specifications:**

[https://www.hakc.org/utility/openPDF/kchamo/IFB\\_24-1121\\_HAKC\\_Dunbar\\_Gardens\\_Elevated\\_Courtyard\\_Walkway\\_Renovations\\_Specifications.pdf?generation=1732051460626500&alt=media](https://www.hakc.org/utility/openPDF/kchamo/IFB_24-1121_HAKC_Dunbar_Gardens_Elevated_Courtyard_Walkway_Renovations_Specifications.pdf?generation=1732051460626500&alt=media)

**Page 1 of Bid Form**  
**IFB 24-1121**

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

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

**TO:** Housing Authority of Kansas City, Missouri  
3822 Summit Street  
Kansas City, Missouri 64111  
Hereinafter called the "Owner"

The undersigned bidder for \_\_\_\_\_, (your company name) located at \_\_\_\_\_, (your company address) in accordance with the applicable specifications and related documents prepared by the Housing Authority of Kansas City, Missouri, and having familiarized itself with the local conditions effecting the cost of the Work at the place where the Work is to be done and with the Instructions to Bidders, Plans and Specifications, General and Supplementary Conditions, Special Conditions, Form of Agreement and other Contract Documents, and having examined the location of the proposed Work and considered the availability of labor and materials, hereby proposes and agrees to perform everything required to be performed, and to provide and furnish all labor, materials, necessary tools, expendable equipment, and all utility and transportation service necessary to perform and complete in a workmanlike and timely manner all the Work required to **3392 Colorado Ave KCMO 64128** in accordance with the scope of work, all in strict conformance with the Instructions to Bidders and other Contract Documents (including Addendum Nos \_\_, \_\_, and \_\_, the receipt of which is hereby acknowledged,) for the lump sum(s) hereinafter specified.

**MBE/WBE PARTICIPATION**

Does the bidder have a MBE/WBE policy for awarding to subcontractors? \_\_\_\_\_

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

If 'Yes', indicate potential MBE/WBE participation level:

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

**All pages of the Bid Form must be:**  
**Filled out completely, signed and returned.**  
**Failure to complete and submit all documents request in this IFB may**  
**remove your bid from consideration.**

**Page 2 of Bid Form**  
**IFB 24-1121**

This base bid shall include all items as specified in the IFB for a Lump Sum Bid of:

Total : \_\_\_\_\_

***Developed by all cost associated with each section of work specified.***

TIMING

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

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

The bidder understands that days are defined as calendar days.

The Bidder agrees to deliver to the HAKC the Certification of Insurance, Representations, Certifications and Other Statements, and Contractors Occupation Statement.

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

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

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

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

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

**NO BID REPLY FORM**

**HOUSING AUTHORITY OF KANSAS CITY (HAKC)**

**INVITATION FOR BIDS (IFB) #24-1121  
Dunbar Catwalk Replacement  
at  
3392 Colorado Ave KCMO 64128**

To assist us in obtaining good competition on our Invitation for Bids (IFB), we ask that each firm that has received an invitation, but does not wish to propose, state their reason(s) below and return to the Procurement department via fax or email with the subject line "Bid #24-1121."

This information will not preclude receipt of future invitations unless you request removal from the Bidders' List by indicating below.

***Unfortunately, we must offer a "No Bid" at this time because:***

\_\_\_\_ 1. We do not wish to participate in the bid process.

\_\_\_\_ 2. We do not wish to propose under the terms and conditions of the Invitation for Bid document. Our objections are:

---

---

\_\_\_\_ 3. We do not feel we can be competitive.

\_\_\_\_ 4. We do not provide the services on which Bids are requested.

\_\_\_\_ 5. Other:

---

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\_\_\_\_ We wish to remain on the Bidders' list for these services.

\_\_\_\_ We wish to be removed from the Bidders' list for these services.

\_\_\_\_\_  
FIRM NAME

\_\_\_\_\_  
SIGNATURE

**IFB 24-1121**

**NON-COLLUSIVE AFFIDAVIT**

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

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

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

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

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

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

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

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

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

# REFERENCES

## BANKS

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

## TRADE

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

## SUBCONTRACTORS

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







## STATEMENT OF QUALIFICATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NAME	ADDRESS	DATE

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

NAME	ADDRESS	PHONE	AMOUNT	START	COMPLETE

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

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

10. If so, provide the information below:

NAME	% of OWNERSHIP	RACE	SEX	TITLE

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

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

13. Registration with Secretary of State of Missouri (Enclose a copy)

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

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

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

NAME	ADDRESS	PHONE	AMOUNT	START	COMPLETE

17. 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

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

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

20. Social Security Number: \_\_\_\_\_

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

22. Insurance Company: \_\_\_\_\_

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

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

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

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

**At Contract Signing – verification of the HAKC as an Additional Insured is required.**

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

Names of Agencies:

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

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

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

\_\_\_\_\_  
Date

**STATEMENT OF RELEASE OF INFORMATION**  
**AUTHORIZATION**

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

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

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

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

STATE OF MISSOURI    )  
  ) SS  
COUNTY OF JACKSON )

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

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

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

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

# JOINT VENTURE QUESTIONNAIRE

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

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

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

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

# General Conditions for Construction Contracts - Public Housing Programs

U.S. Department of Housing and Urban  
Development  
Office of Public and Indian Housing  
OMB Approval No. 2577-0157 (exp. 1/31/2027)

**Applicability. This form is applicable to any  
construction/development contract greater than \$250,000.**

Public reporting burden for this collection of information is estimated to average 1.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding the accuracy of this burden estimate and any suggestions for reducing this burden can be sent to the Reports Management Officer, Office of Policy Development and Research, REE, Department of Housing and Urban Development, 451 7th St SW, Room 4176, Washington, DC 20410-5000. When providing comments, please refer to OMB Approval No. 2577-0157. This form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 2 CFR 200, and those requirements set forth in Section 3 of the Housing and Urban Development Act of 1968 and its amendment by the Housing and Community Development Act of 1992, implemented by HUD at 24 CFR Part 75. The form is required for construction contracts awarded by Public Housing Agencies (PHAs). The form is used by Housing Authorities in solicitations to provide necessary contract clauses. If the form were not used, PHAs 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. HUD may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB number.

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## 1. Definitions

- (a) "Architect" means the person or other entity engaged by the PHA to perform architectural, engineering, design, and other services related to the work as provided for in the contract. When a PHA uses an engineer to act in this capacity, the terms "architect" and "engineer" shall be synonymous. The Architect shall serve as a technical representative of the Contracting Officer. The Architect's authority is as set forth elsewhere in this contract.
- (b) "Contract" means the contract entered into between the PHA and the Contractor. It includes the forms of Bid, the Bid Bond, the Performance and Payment Bond or Bonds or other assurance of completion, the Certifications, Representations, and Other Statements of Bidders (form HUD-5370), these General Conditions of the Contract for Construction (form HUD-5370), the applicable wage rate determinations from the U.S. Department of Labor, any special conditions included elsewhere in the contract, the specifications, and drawings. It includes all formal changes to any of those documents by addendum, change order, or other modification.
- (c) "Contracting Officer" means the person delegated the authority by the PHA to enter into, administer, and/or terminate this contract and designated as such in writing to the Contractor. The term includes any successor Contracting Officer and any duly authorized representative of the Contracting Officer also designated in writing. The Contracting Officer shall be deemed the authorized agent of the PHA in all dealings with the Contractor.
- (d) "Contractor" means the person or other entity entering into the contract with the PHA to perform all of the work required under the contract.
- (e) "Drawings" means the drawings enumerated in the schedule of drawings contained in the Specifications and as described in the contract clause entitled Specifications and Drawings for Construction herein.
- (f) "HUD" means the United States of America acting through the Department of Housing and Urban Development including the Secretary, or any other person designated to act on its behalf. HUD has agreed, subject to the provisions of an Annual Contributions Terms and Conditions (ACC), to provide financial assistance to the PHA, which includes assistance in financing the work to be performed under this contract. As defined elsewhere in these General Conditions or the contract documents, the determination of HUD may be required to authorize changes in the work or for release of funds to the PHA for payment to the Contractor. Notwithstanding HUD's role, nothing in this contract shall be construed to create any contractual relationship between the Contractor and HUD.
- (g) "Project" means the entire project, whether construction or rehabilitation, the work for which is provided for in whole or in part under this contract.
- (h) "PHA" means the Public Housing Agency organized under applicable state laws which is a party to this contract.
- (j) "Specifications" means the written description of the technical requirements for construction and includes the criteria and tests for determining whether the requirements are met.
- (l) "Work" means materials, workmanship, and manufacture and fabrication of components.

## 2. Contractor's Responsibility for Work

- (a) The Contractor shall furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the work. The Contractor shall also furnish all necessary water, heat, light, and power not made available to the Contractor by the PHA pursuant to the clause entitled Availability and Use of Utility Services herein.
- (b) The Contractor shall perform on the site, and with its own organization, work equivalent to at least [ ] (12 percent unless otherwise indicated) of the total amount of work to be performed under the order. This percentage may be reduced by a supplemental agreement to this order if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the PHA.
- (c) At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.
- (d) The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall hold and save the PHA, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.
- (e) The Contractor shall lay out the work from base lines and bench marks indicated on the drawings and be responsible for all lines, levels, and measurements of all work executed under the contract. The Contractor shall verify the figures before laying out the work and will be held responsible for any error resulting from its failure to do so.
- (f) The Contractor shall confine all operations (including storage of materials) on PHA premises to areas authorized or approved by the Contracting Officer.
- (g) The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. After completing the work and before final inspection, the Contractor shall (1) remove from the premises all scaffolding, equipment, tools, and materials (including rejected materials) that are not the property of the PHA and all rubbish caused by its work; (2) leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer; (3) perform all specified tests; and, (4) deliver the installation in complete and operating condition.
- (h) The Contractor's responsibility will terminate when all work has been completed, the final inspection made, and the work accepted by the Contracting Officer. The Contractor will then be released from further obligation except as required by the warranties specified elsewhere in the contract.

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

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



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

#### 4. Other Contracts

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

### Construction Requirements

#### 5. Pre-construction Conference and Notice to Proceed

of the work, and that it has investigated and satisfied itself

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

#### 6. Construction Progress

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

#### 7. Site Investigation and Conditions Affecting the Work

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

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

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

## 8. Differing Site Conditions

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site(s), of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. Work shall not proceed at the affected site, except at the

Contractor's risk, until the Contracting Officer has provided written instructions to the Contractor. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, the Contractor shall file a claim in writing to the PHA within ten days after receipt of such instructions and, in any event, before proceeding with the work. An equitable adjustment in the contract price, the delivery schedule, or both shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

## 9. Specifications and Drawings for Construction

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

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

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by", or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown" "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place" that is "furnished and installed".

(d) "Shop drawings" means drawings, submitted to the PHA by the Contractor, subcontractor, or any lower tier subcontractor, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The PHA may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with other contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the PHA's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Architect approves any such variation and the Contracting Officer concurs, the Contracting Officer shall issue an appropriate modification to the contract, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) It shall be the responsibility of the Contractor to make timely requests of the PHA for such large scale and full size drawings, color schemes, and other additional information, not already in his possession, which shall be

required in the planning and production of the work. Such requests may be submitted as the need arises, but each such request shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay.

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

#### 10. As-Built Drawings

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

#### 11. Material and Workmanship

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

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

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

#### 12. Permits and Codes

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

waivers. Before installing the work, the Contractor shall examine the drawings and the specifications for compliance with applicable codes and regulations bearing on the work and shall immediately report any discrepancy it may discover to the Contracting Officer.

Where the requirements of the drawings and specifications fail to comply with the applicable code or regulation, the Contracting Officer shall modify the contract by change order pursuant to the clause entitled Changes herein to conform to the code or regulation.

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

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

(a) In performing this contract, the Contractor shall:

- (1) Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation;
- (2) Protect the lives, health, and safety of other persons;
- (3) Prevent damage to property, materials, supplies, and equipment; and,
- (4) Avoid work interruptions.

(b) For these purposes, the Contractor shall:

- (1) Comply with regulations and standards issued by the Secretary of Labor at 29 CFR Part 1926. Failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96), 40 U.S.C. 3701 et seq.; and
- (2) Include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.

(c) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 CFR Part 1904.

(d) The Contracting Officer shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

(e) The Contractor shall be responsible for its subcontractors' compliance with the provisions of this clause. The Contractor shall take such action with respect to any subcontract as the PHA, the Secretary of Housing and Urban Development, or the Secretary of Labor shall direct as a means of enforcing such provisions.

### 14. Temporary Heating

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

### 15. Availability and Use of Utility Services

(a) The PHA shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the PHA or, where the utility is produced by the PHA, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the PHA, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

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

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed under this contract, and which do not unreasonably interfere with the work required under this contract.

(b) The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance of this contract, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(c) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. Prior to disturbing the ground at the construction site, the Contractor shall ensure that all underground utility lines are clearly marked.

(d) The Contractor shall shore up, brace, underpin, secure, and protect as necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected by the excavations or other operations connected with the construction of the project.

(e) Any equipment temporarily removed as a result of work under this contract shall be protected, cleaned, and replaced in the same condition as at the time of award of this contract.

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

## 17. Temporary Buildings and Transportation of Materials

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

## 18. Clean Air and Water

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

## 19. Energy Efficiency

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

## 20. Inspection and Acceptance of

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

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

## 21. Use and Possession Prior to Completion

- (a) The PHA shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the PHA intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The PHA's possession or use shall not be deemed an acceptance of any work under the contract.
- (b) While the PHA has such possession or use, the Contractor shall be relieved of the responsibility for (1) the loss of or damage to the work resulting from the PHA's possession or use, notwithstanding the terms of the clause entitled Permits and Codes herein; (2) all maintenance costs on the areas occupied; and, (3) furnishing heat, light, power, and water used in the areas

occupied without proper remuneration therefore. If prior possession or use by the PHA delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

## 22. Warranty of Title

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

## 23. Warranty of

- (a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any subcontractor or supplier at any tier. This warranty shall continue for a period of \_\_\_\_\_ (one year unless otherwise indicated) from the date of final acceptance of the work. If the PHA takes possession of any part of the work before final acceptance, this warranty shall continue for a period of (one year unless otherwise indicated) from the date that the PHA takes possession.
- (b) The Contractor shall remedy, at the Contractor's expense, any failure to conform, or any defect. In addition, the Contractor shall remedy, at the Contractor's expense, any damage to PHA-owned or controlled real or personal property when the damage is the result of—
  - (1) The Contractor's failure to conform to contract requirements; or
  - (2) Any defects of equipment, material, workmanship or design furnished by the Contractor.
- (c) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for (one year unless otherwise indicated) from the date of repair or replacement.
- (d) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect or damage.
- (e) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the PHA shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- (f) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall:
  - (1) Obtain all warranties that would be given in normal commercial practice;
  - (2) Require all warranties to be executed in writing, for the benefit of the PHA; and,
  - (3) Enforce all warranties for the benefit of the PHA.
- (g) In the event the Contractor's warranty under paragraph (a) of this clause has expired, the PHA may bring suit at its own expense to enforce a subcontractor's, manufacturer's or supplier's warranty.

- (h) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defect of material or design furnished by the PHA nor for the repair of any damage that results from any defect in PHA furnished material or design.
- (i) Notwithstanding any provisions herein to the contrary, the establishment of the time periods in paragraphs (a) and (c) above relate only to the specific obligation of the Contractor to correct the work, and have no relationship to the time within which its obligation to comply with the contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligation other than specifically to correct the work.
- (j) This warranty shall not limit the PHA's rights under the Inspection and Acceptance of Construction clause of this contract with respect to latent defects, gross mistakes or fraud.

**24. Prohibition Against Liens**

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

**Administrative Requirements**

**25. Contract Period**

this contract within \_\_\_\_\_ calendar days of the effective date of the contract, or within the time schedule established in the notice to proceed issued by the Contracting Officer.

**26. Order of Provisions**

accordance with the terms and conditions of the

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

**27. Payments**

retain ten (10) percent of the amount of progress

- (a) The PHA shall pay the Contractor the price as provided in this contract.
- (b) The PHA shall make progress payments approximately every 30 days as the work proceeds, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. The PHA may, subject to written determination and approval of the Contracting Officer, make more frequent payments to contractors which are qualified small businesses.
- (c) Before the first progress payment under this contract, the Contractor shall furnish, in such detail as requested by the Contracting Officer, a breakdown of the total contract price showing the amount included therein for each principal category of the work, which shall substantiate the payment amount requested in order to provide a

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

- (d) The Contractor shall submit, on forms provided by the PHA, periodic estimates showing the value of the work performed during each period based upon the approved submitted not later than \_\_\_\_\_ days in advance of the date set for payment and are subject to correction and revision as required. The estimates must be approved by the Contracting Officer with the concurrence of the Architect prior to payment. If the contract covers more than one project, the Contractor shall furnish a separate progress payment estimate for each.
- (e) Along with each request for progress payments and the required estimates, the Contractor shall furnish the following certification, or payment shall not be made: I hereby certify, to the best of my knowledge and belief, that:

- (1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;
- (2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements; and,
- (3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in subcontract.

**Name:**

Title:

Date:

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

Material delivered to the Contractor at locations other than the site may also be taken into consideration if the Contractor furnishes satisfactory evidence that (1) it has acquired title to such material; (2) the material is properly stored in a bonded warehouse, storage yard, or similar suitable place as may be approved by the Contracting Officer; (3) the material is insured to cover its full value; and (4) the material will be used to perform this contract. Before any progress payment which includes delivered material is made, the Contractor shall furnish such documentation as the Contracting Officer may require to assure the protection of the PHA's interest in such materials. The Contractor shall remain responsible for such stored material notwithstanding the transfer of title to the PHA.

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

## 28. Contract Modifications

- (a) Only the Contracting Officer has authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing.
- (b) The Contracting Officer may modify the contract unilaterally (1) pursuant to a specific authorization stated in a contract clause (e.g., Changes); or (2) for administrative matters which do not change the rights or

responsibilities of the parties (e.g., change in the PHA address). All other contract modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer.

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

## 29. Changes

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



- (1) Direct Costs. Materials (list individual items, the quantity and unit cost of each, and the aggregate cost); Transportation and delivery costs associated with materials; Labor breakdowns by hours or unit costs (identified with specific work to be performed); Construction equipment exclusively necessary for the change; Costs of preparation and/ or revision to shop drawings resulting from the change; Worker's Compensation and Public Liability Insurance; Employment taxes under FICA and FUTA; and, Bond Costs when size of change warrants revision.
- (2) Indirect Costs. Indirect costs may include overhead, general and administrative expenses, and fringe benefits not normally treated as direct costs.
- (3) Profit. The amount of profit shall be negotiated and may vary according to the nature, extent, and complexity of the work required by the change. The allowability of the direct and indirect costs shall be determined in accordance with the Contract Cost Principles and Procedures for Commercial Firms in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31), as implemented by HUD Handbook 2210.18, in effect on the date of this contract. The Contractor shall not be allowed a profit on the profit received by any subcontractor. Equitable adjustments for deleted work shall include a credit for profit and may include a credit for indirect costs. On proposals covering both increases and decreases in the amount of the contract, the application of indirect costs and profit shall be on the net-change in direct costs for the Contractor or subcontractor performing the work.
- (g) The Contractor shall include in the proposal its request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the contract in its entirety.
- (h) The Contracting Officer shall act on proposals within 30 days after their receipt, or notify the Contractor of the date when such action will be taken.
- (i) Failure to reach an agreement on any proposal shall be a dispute under the clause entitled Disputes herein. Nothing in this clause, however, shall excuse the Contractor from proceeding with the contract as changed.
- (j) Except in an emergency endangering life or property, no change shall be made by the Contractor without a prior order from the Contracting Officer.

### 30. Suspension of Work

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

- been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or for which any equitable adjustment is provided for or excluded under any other provision of this contract.
- (c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and, (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

### 31. Disputes

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

### 32. Default

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

proceed with the work (or separable part of the work) that has been delayed. In this event, the PHA may take over the work and complete it, by contract or otherwise, and may take possession of and use any materials, equipment, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the PHA resulting from the **Convenience** Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the PHA in completing the work.

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

### 33. Liquidated Damages

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

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

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

### 34. Termination for

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

### 35. Assignment of Contract

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

### 36. Insurance

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

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

(3) Automobile Liability on owned and non-owned motor vehicles used on the site(s) or in connection therewith for a combined single limit for bodily injury and property damage of not less than \$ \_\_\_\_\_

[Contracting Officer insert amount] per occurrence.

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

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

### 37. Subcontracts

(a) Definitions. As used in this contract -

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

(2) "Subcontractor" means any supplier, vendor, or firm that furnishes supplies, materials, equipment, or services to or for the Contractor or another subcontractor.

(b) The Contractor shall not enter into any subcontract with any subcontractor who has been temporarily denied participation in a HUD program or who has been suspended or debarred from participating in contracting programs by any agency of the United States Government or of the state in which the work under this contract is to be performed.

(c) The Contractor shall be as fully responsible for the acts or omissions of its subcontractors, and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Contractor.

(d) The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this contract insofar as they are applicable to the work of subcontractors.

(e) Nothing contained in this contract shall create any contractual relationship between any subcontractor and the PHA or between the subcontractor and HUD.

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

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

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

### 39. Equal Employment Opportunity

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

(a) The Contractor/Seller shall not discriminate against any employee or applicant for employment because of race color, religion, sex, sexual orientation, gender identity, disability, or national origin.

(b) The Contractor/Seller 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, sexual orientation, gender identity, disability, or national origin. Such action shall include, but not be limited to, (1) employment, (2) upgrading 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/Seller agrees to post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(d) The Contractor/Seller shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor/Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(e) The Contractor/Seller 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/Seller shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(g) The Contractor/Seller shall furnish all information and reports required by Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor/Seller 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 that the Contractor/Seller is in noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor/seller may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(i) The contractor/seller will include the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub[contractor/seller] or vendor. The [contractor/seller] will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the [contractor/seller] becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the [contractor/seller] may request the United States to enter into such litigation to protect the interests of the United States.

(j) Compliance with the requirements of this clause shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act and the Indian Preference clause of this contract.

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

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

(b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 75, 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 75 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 prioritization requirements and shall state the minimum percentages of labor hour requirements established in the Benchmark Notice (FR-6085-N-04).

(d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75, 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 75. 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 75.

(e) Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(f) Contracts, subcontracts, grants, or subgrants subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business opportunities to Indians and Indian organizations, and are therefore not subject to the requirements of 24 CFR Part 75.

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#### 41. Interest of Members of Congress

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

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

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

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

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

#### 44. Royalties and Patents

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

#### 45. Examination and Retention of Contractor's Records

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

#### 46. Labor Standards - Davis-Bacon and Related

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

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

be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2) (i) Any class of laborers or mechanics, including

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

- (ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employee Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.
- (iii) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.
- (iv) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (a)(2)(ii) or (iii) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in classification.
- (3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the

amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

- (b) Withholding of funds. HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working in the construction or development of the project, all or part of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.
- (c) Payrolls and basic records.
- (1) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working in the construction or development of the project. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(2) (i) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1214-0149.)

(ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (A) That the payroll for the payroll period contains the information required to be maintained under paragraph (c) (1) of this clause and that such information is correct and complete;
  - (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and
  - (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by subparagraph (c)(2)(ii) of this clause.
- (iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(3) The Contractor or subcontractor shall make the records required under subparagraph (c)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to

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

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

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

- (3) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- (e) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.
- (f) Contract termination; debarment. A breach of this contract clause may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.
- (g) Compliance with Davis-Bacon and related Act requirements. All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (h) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this clause shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the PHA, HUD, the U.S. Department of Labor, or the employees or their representatives.
- (i) Certification of eligibility.
  - (1) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

- (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a United States Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (3) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.
- (j) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.
  - (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
  - (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in subparagraph (j)(1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic (including watchmen and guards) employed in violation of the provisions set forth in subparagraph (j)(1) of this clause, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in subparagraph (j)(1) of this clause. DOL posts current fines at: <https://www.dol.gov/whd/govcontracts/cwhssa.htm#cmp>
  - (3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in subparagraph (j)(2) of this clause.
- (k) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause, and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.



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47. Non-Federal Prevailing Wage Rates

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

(1) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141 et seq.) to be prevailing in the locality with respect to such trade;

(b) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor (DOL) or a DOL-recognized State Apprenticeship Agency; or

(c) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

48. Procurement of Recovered Materials.

(a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

( ) 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 Bidders for Contracts  
Public and Indian Housing Programs**

# Instructions to Bidders for Contracts

## Public and Indian Housing Programs

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### 1. Bid Preparation and Submission

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

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

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

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

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

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

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

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

### 2. Explanations and Interpretations to Prospective Bidders

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

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

### 3. Amendments to Invitations for Bids

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

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

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

### 4. Responsibility of Prospective Contractor

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

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

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

## 5. Late Submissions, Modifications, and Withdrawal of Bids

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

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

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

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

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

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

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

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

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

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

## 6. Bid Opening

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

## 7. Service of Protest

(a) Definitions. As used in this provision:

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

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

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

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

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

## 8. Contract Award

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

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

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

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

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

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

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

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

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

**10. Assurance of Completion**

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

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

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

[ ] (3) a 20 percent cash escrow;

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

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

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

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

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

**11. Preconstruction Conference (applicable to construction contracts)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# Representations, Certifications, and Other Statements of Bidders

## Public and Indian Housing Programs

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### 1. Certificate of Independent Price Determination

(a) The bidder certifies that--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 2. Contingent Fee Representation and Agreement

(a) Definitions. As used in this provision:

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

#### 4. Organizational Conflicts of Interest Certification

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

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

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

#### 5. Bidder's Certification of Eligibility

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

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

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

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

#### 6. Minimum Bid Acceptance Period

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

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

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

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

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

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

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

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

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

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

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

(Check the block applicable to you)

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

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

The bidder represents and certifies that it:

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Obtain identical certifications from the proposed subcontractors;
- (2) Retain the certifications in its files; and
- (3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

**Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities**

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

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

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

The bidder certifies that:

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

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

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

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

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

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

**13. Bidder's Signature**

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

\_\_\_\_\_  
(Signature and Date)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Company Address)

# **Sample Contract**

## **CONTRACT FOR CONSTRUCTION SERVICES**

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

**THIS AGREEMENT** made this \_\_\_\_ day of November 2024

**BETWEEN THE HOUSING AUTHORITY OF KANSAS CITY, MISSOURI (HAKC)**, a Missouri Municipal Corporation with its principal business office at 3822 Summit Street, Kansas City, MO 64111.

and the Contractor: \_\_\_\_\_.

For the following Project: \_\_\_\_\_.

HAKC and the Contractor agree as set forth below:

**Article 1 Definitions**

- 1.1 "Acceptance"
- 1.2 "Agreement"
- 1.3 "Calendar Day"
- 1.4 "Complete" and "Completion"
- 1.5 "Contract Price"
- 1.6 "Contract Time"
- 1.7 "Contracting Officer"
- 1.8 "Day"
- 1.9 "Drawings"
- 1.10 "Final Acceptance"
- 1.11 "Final Completion"
- 1.12 "General Conditions"
- 1.13 "HAKC"
- 1.14 "HAKC Residents"
- 1.15 "Minority Business"
- 1.16 "Owner"
- 1.17 "PHA/IHA"
- 1.18 "Project Manager"
- 1.19 "Specifications"
- 1.20 "Subcontract"
- 1.21 "Subcontractor"
- 1.22 "Substantially Complete"
- 1.23 "Women's Business Enterprise"
- 1.24 "Work"
- 1.25 "Work Day"
- 1.26 "Work Site"

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

- 2.1 *GENERAL RESPONSIBILITIES*
  - 2.1a. *Compliance & Business Judgment*
  - 2.1b. *Supervision & Coordination*
  - 2.1c. *Contracting Officer:*
- 2.2 *EMPLOYEES & SUBCONTRACTORS*
- 2.3 *CONTRACTOR'S USE OF THE WORK SITE*
  - 2.3a. *Project Manager's Instructions*
  - 2.3b. *Roads, Entrances & Storage*
  - 2.3c. *Material Storage*
  - 2.3d. *Cleaning & Maintenance of Work Site*
- 2.4 *INDEMNIFICATION*
- 2.5 *INDEPENDENT CONTRACTOR*

**Article 3-5 Purposely Omitted**

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

- 6.1 *PROGRESS SCHEDULE*
  - 6.1a. *Content of Schedule*
  - 6.1b. *Submission & Approval of Schedule*
  - 6.1c. *Updating Schedule*
  - 6.1d. *Schedule to Subcontractors*
  - 6.1e. *Compliance with Schedule*
- 6.2 *DELETION*
- 6.3 *PROGRESS REPORTS*
  - 6.3 a. *Preparation & Submission*
  - 6.3 b. *Form & Handwriting*
  
- 6.4 *PROGRESS MEETINGS*

- 6.4 a. *Time & Attendance*
- 6.4 b. *Agenda & Minutes*

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

- 7.1 *GRADES & DIMENSIONS*
- 7.2 *FIELD MEASUREMENTS*

**Article 8-11 Purposely Omitted**

**Article 12 Permits and Codes**

- 12.1 *OCCUPATIONAL LICENSES*
- 12.2 *APPLICABLE LAWS & REGULATIONS*
- 12.3 *INDEMNIFICATION*

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

- 13.1 *BARRICADES & FENCING*
- 13.2 *THEFT, VANDALISM & PHYSICAL HARM*
- 13.3 *SAFETY PROGRAM*
- 13.4 *LOCAL SAFETY REQUIREMENTS*

**Article 14 Temporary Heating**

- 14.1 *PERMANENT EQUIPMENT*

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

- 15.1 *UTILITY ACTIVATION & DEACTIVATION*
- 15.2 *UTILITY SCHEDULE & EASEMENTS*
- 15.3 *UTILITY INSPECTIONS & PERMITS*

**Article 16 Protection of Existing Vegetation, Structures, Equipment, Utilities & Improvements**

- 16.1 *NOTICE OF UTILITY DEACTIVATION*

**Article 17 Purposely Omitted**

**Article 18 Clean Air and Water**

- 18.1. *AIRBORNE DIRT*

**Article 20 Inspection and Acceptance of Construction**

- 20.1 *INSPECTION & TEST ASSISTANCE*
- 20.2 *INSPECTION & TEST COORDINATION*
- 20.3 *LIST OF NONCONFORMING WORK*
- 20.4 *SUBSTANTIAL COMPLETION APP.*
- 20.5 *SUBSTANTIAL COMPLETION CERT.*
- 20.6 *PARTIAL SUBSTANTIAL COMPLETION*
- 20.7 *FINAL COMPLETION APPLICATION*
- 20.8 *FINAL COMPLETION CERTIFICATION*
- 20.9 *EFFECT OF CERTIFICATES*
- 20.10 *DELETION*

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

- 21.1 *COORDINATION & OCCUPANCY CERT.*
- 21.2 *NOTICE OF DELAY*

**Article 23 Warranty of Construction**

- 23.1 *WARRANTY OBLIGATIONS*
- 23.2 *HAKC'S RECOURSE*

**Article 24 Prohibition against Liens**

- 1.1 *PARTIAL LIEN WAIVERS*
- 1.2 *FINAL LIEN WAIVER & RELEASE*
- 1.3 *BOND IN LIEU OF LIEN WAIVER*
- 1.4 *UNSATISFIED LIENS & CLAIMS*

**Article 25 Contract Period/Schedule for Performance**

- 25.1 *TIME OF THE ESSENCE/SCHEDULE*
- 25.2 *SCHEDULE*
- 25.3 *ACCESS TO SITE/ COMMITMENT TO SCHEDULE*
- 25.4 *DELETION*

**Article 26 Purposely Omitted**

**Article 27 Payments**

- 27.1 *CONTRACT PRICE & TAXES*
- 27.2 *PRICE BREAKDOWN*
- 27.3 *SUBMISSION OF PAYMENT APP.*
- 27.4 *FORM OF PAYMENT APPLICATIONS*
  - a. *Cover Letter*
  - b. *Price Breakdown*
  - c. *Periodic Estimate for Partial Payment*
  - d. *Change Order Documentation*
  - e. *Stored Materials Documentation*
  - f. *Statement of Compliance*
  - g. *Payroll Documentation*
  - h. *Certificate Regarding Payment*
  - i. *Construction Progress Schedule*
  - j. *Certificate and Release*
  - k. *Partial Lien Waivers*
  - l. *Other Documents*
- 27.5 *PAYMENT CERTIFICATE*
- 27.6 *PAYMENT*
- 27.7 *REJECTION OF PAYMENT APPLICATION*
- 27.8 *EFFECT OF PAYMENT*
- 27.9 *ERRONEOUS PAYMENT APP.*
- 27.10 *RETAINAGE*
- 27.11 *FINAL PAYMENT APPLICATION*
  - a. *Consent of Surety*
  - b. *Certificate of Completion-Consolidated*
  - c. *Warranties & Manuals*
  - d. *Release of Claims*
  - e. *Final Lien Waiver & Release*
  - f. *Wages, Hours & Dismissal Rights Affidavit*
  - g. *Stock & Parts*
- 27.12 *FINAL PAYMENT CERTIFICATE*
- 27.13 *FINAL PAYMENT*
- 27.14 *DELETION*

**Article 28 Contract Modifications**

- 28.1 *DELETION*

**Article 29 Changes**

- 29.1 *PERFORMANCE OF CHANGED WORK*
- 29.2 *CHANGE ORDER APPLICATIONS*
- 29.3 *DELAYS*
  - 29.3a. *Sources of Delay Claims*
  - 29.3b. *Critical Path Delays*

- 29.3c. *Weather Delays*
- 29.4 *CONTENT OF CHANGE ORDER APP.*
- 29.5 *ACTUAL COSTS*
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## Article 1 Definitions

1.1 *"Acceptance"* means the issuance of a Certificate of Substantial Completion.

1.2 *"Agreement"* means all items incorporated in Article 50, as component parts of this Agreement between HAKC and Contractor. The term "Agreement" also includes all formal changes made in writing in accordance with the procedures established herein.

1.3 *"Calendar Day"* means a twenty-four hour period of time, including weekdays, weekends and holidays.

1.4 *"Complete" and "Completion"* shall have the same meaning as the term "Final Completion" except when the terms are modified by the words "partial," or "substantial," or another meaning is undisputedly intended, as evidenced by the context or usage of such terms.

1.5 *"Contract Price"* and similar terms (including, but not limited to, Contract Sum and Agreement Price), mean the sum which HAKC agrees to pay, and Contractor agrees to accept as payment, for the performance of this Agreement, pursuant to Paragraph 27.1.

1.6 *"Contract Time"* means the period of time required for performance of the Work stated in Article 25.

1.7 *"Contracting Officer"* means the person delegated the authority by HAKC to enter into, administer, and/or terminate this contract and designated as such in writing to the Contractor. The term includes any successor Contracting Officer and any duly authorized representative of the Contracting Officer also designated in writing. The Contracting Officer shall be deemed the authorized agent of HAKC in all dealings with the Contractor.

1.8 *"Day"* means a Calendar Day.

1.9 *"Drawings"* means the graphic and pictorial documents, prepared or approved by the Project Manager, showing the design, location and dimensions of the Work, generally including plans, elevations, sections details, schedules and diagrams.

1.10 *"Final Acceptance"* means the issuance by the Project Manager of the Certificate of Final Completion.

1.11 *"Final Completion"* means the condition of the Work on the date the Project Manager issues the Certificate of Final Completion.

1.12 *"General Conditions"* mean the General Conditions of the Contract for Construction, form HUD-5370.

1.13 *"HAKC"* means Housing Authority of Kansas City, Missouri, a Missouri Municipal Corporation created pursuant to R.S.Mo. § 99.040.

1.14 *"HAKC Residents"* means individuals who reside at a housing project owned by HAKC.

1.15 *"Minority Business"* means a business which is at least fifty-one percent (51%) owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least fifty-one percent (51%) of the voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority Group members include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and Asian Indian Americans, and Hasidic Jewish Americans.

1.16 *"Owner"* means Housing Authority of Kansas City, Missouri, a Missouri Municipal Corporation created pursuant to R.S.Mo. § 99.040.

1.17 *"PHA/IHA"* means Housing Authority of Kansas City, Missouri, a Missouri Municipal Corporation created pursuant to R.S.Mo. § 99.040.

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

1.19 *"Specifications"* means the documents prepared by the HAKC's Construction Management Department consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

1.20 *"Subcontract"* means any contract, purchase order or other agreement, including modifications and Change Orders to the foregoing, entered into by a Subcontractor to furnish supplies, materials, equipment and services for the performance of this Agreement.

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

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

regarding operation and maintenance procedures with respect to such Work.

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

1.24 *"Work"* includes all construction and services required by the Specifications, Drawings, and this Agreement, whether completed or partially completed, including all labor, materials, equipment and services for the **Fire Rehabilitation** and as further described in the written scope of work and Contractor's proposal if any attached hereto.

1.25 *"Work Day"* means a twenty-four hour (24) period of time, excluding Saturdays, Sundays and federal holidays.

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

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

### 2.1 *GENERAL RESPONSIBILITIES*

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

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

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

### 2.2 *EMPLOYEES / SUBCONTRACTORS*

The Contractor shall be responsible for the conduct and discipline of its employees and Subcontractors. All

workmen shall have sufficient knowledge, skill, and experience to perform properly the Work assigned to them. Any workman, who does not perform his Work in a skillful manner, appears to be incompetent, or acts in a disorderly or intemperate manner, shall, at the request of the Project Manager, be removed from the work site by the Contractor or his Superintendent. Such removal is not cause for an extension of time in which to complete the Work.

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

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

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

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

2.3d. *Cleaning & Maintenance of Work Site:* The Contractor shall insure that work site is cleaned on a daily basis. Debris must be removed or placed in a container approved by Project Manager.

### 2.4 *INDEMNIFICATION*

Contractor agrees to indemnify and hold harmless HAKC and HAKC's directors, officers and employees against any and all claims, demands, losses and liabilities, including court costs and attorneys' fees, arising out of any act or omission by or on behalf of Contractor or any Subcontractor.

### 2.5 *INDEPENDENT CONTRACTOR*

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

## **Article 3-5 Purposely Omitted**

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

### 6.1 PROGRESS SCHEDULE:

6.1 a. *Content of Schedule:* Contractor shall prepare a detailed construction progress schedule covering all aspects of the Work. The Progress Schedule shall:

(1) Provide a detailed, graphic representation of activities and events that will occur during performance of the Work.

(2) Identify each phase of construction and occupancy.

(3) Identify dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the Contract Documents,

(4) Display the relationship of the Work to other activities, such as scheduled occupancy by HAKC or other contractors' work,

(5) Establish start dates and completion dates of distinct aspects of the Work;

(6) Indicate the estimated percentage of completion of Work activities in ten percent (10%) increments,

(7) Reflect the time required for procurement of manufactured or processed materials and equipment,

(8) Reflect time required for inspections and certifications; and,

(9) Additional information requested by the Contracting Officer or any duly authorized representative of HAKC.

6.1b. *Submission & Approval of Schedule:* The Contractor shall submit its proposed Progress Schedule to the Project Manager within ten (10) days after issuance of the Notice to Proceed. After receipt of the proposed Progress Schedule, the Project Manager shall either approve the schedule or notify the Contractor of required modifications. If modifications are required, the Contractor shall modify and resubmit the Progress Schedule, in a form satisfactory to the Project Manager, within seven (7) days after receiving notice of such modifications.

6.1c. *Updating Schedule:* The Contractor shall update the Progress Schedule every calendar month during which Work is performed. The Contractor shall update all aspects of the Progress Schedule, including:

(1) the percentage of Work complete, (2) changes in actual or proposed activity durations, (3) projected

future start and completion dates, (4) delays affecting the Work, (5) additional information requested by the duly authorized representative of HAKC. The Contractor shall submit updated versions of the CPM Progress Schedule with each Application for Payment.

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

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

### 6.2 DELETION

Clause 6(a) of the General Conditions shall be deleted entirely.

### 6.3 PROGRESS REPORTS:

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

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

6.3 c. *Contents:* The Contractor shall indicate the following on weekly Progress Reports:

(1) Subcontractors at the Work Site;

(2) Approximate number of personnel at the Work Site;

(3) Work stoppages and delays, and the causes of such events;

(4) Accidents and unusual events;

(5) Inspections and tests performed, or expected to be performed within the next week;

(6) General weather conditions,

(7) Additional information requested by the Project Manager or other duly authorized representative of HAKC.

#### 6.4 *PROGRESS MEETINGS*

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

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

#### 7.1 *GRADES & DIMENSIONS*

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

#### 7.2 *FIELD MEASUREMENTS*

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

### **Article 8-11 Purposely Omitted**

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

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

## 12.2 *APPLICABLE LAWS/REGULATIONS*

The Contractor shall comply with all applicable laws, ordinances, codes, rules and regulations, including, but not limited to: (A) Sections 103 and 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 327, *et. Seq.* (as supplemented by 29 CFR 5); (B) Anti- Kickback Act, 18 U.S.C. 874, *et seq.* (as supplemented by 29 CFR 3); (C) Conduct and Qualifications regulations found at 24 CFR 85; and, (D) Chapter 290, Wages, Hours and Dismissal Rights, of the Revised Statutes of Missouri, to the extent that such Chapter is not preempted by federal law. The Contractor shall satisfy and comply with applicable HAKC and HUD requirements, regulations and policies.

## 12.3 *INDEMNIFICATION*

The Contractor shall indemnify HAKC for any expense, including court costs and attorneys' fees, incurred by HAKC as a result of the Contractor's, or any Subcontractor's, violation of any law, ordinance, code, rule or regulation.

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

#### 13.1 *BARRICADES & FENCING*

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

#### 13.2 *THEFT, VANDALISM & PHYSICAL HARM*

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

#### 13.3 *SAFETY PROGRAM*

Before commencing construction, the Contractor shall appoint a safety representative on site. The Contractor shall comply with the American Standard Safety Code. The Contractor shall always have on site a binder containing Material Safety Data Sheets. The Contractor shall post an outline of the safety program and the name of the safety representative at the Work Site. The Contractor shall implement its safety program throughout the performance of the Work. HAKC and the Project Manager shall not be responsible for implementation of safety measures.

13.4 *LOCAL SAFETY REQUIREMENTS*

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

**Article 14 Temporary Heating**

14.1 *PERMANENT EQUIPMENT*

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

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

15.1 *UTILITY ACTIVATION & DEACTIVATION*

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

15.2 *UTILITY EASEMENTS*

The Contractor shall obtain easements necessary for the acquisition of temporary utilities, if HAKC does not own easements that can be used for that purpose.

15.3 *UTILITY INSPECTIONS & PERMITS*

The Contractor shall obtain appropriate Inspections, Tests, permits and certifications of appropriate public authorities before activating any temporary utility.

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

16.1 *NOTICE OF UTILITY DEACTIVATION*

Contractor shall obtain approval of the Project Manager and the Project Manager forty-eight (48) hours before

deactivating any utilities in occupied or existing facilities.

**Article 17 Purposely Omitted**

**Article 18 Clean Air and Water**

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

**Article 19 Purposely Omitted**

**Article 20 Inspection and Acceptance of Construction**

20.1 *INSPECTION & TEST ASSISTANCE*

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

20.2 *INSPECTION & TEST COORDINATION*

The Contractor shall coordinate the Work with Inspections and Tests to avoid delays in the Work and prevent disassembly or uncovering of completed Work.

20.3 *LIST OF NONCONFORMING WORK*

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

20.4 *SUBSTANTIAL COMPLETION APPLICATION*

After completion and correction of all Work identified on the List of Unfinished and Nonconforming Work, the Contractor shall submit to the Project Manager a written Application for Certification of Substantial Completion, containing a notarized statement that: (1) the governing codes administration authorities have approved each

building; and, (2) the Contractor has obtained certificates of occupancy for each building from appropriate public agencies.

20.5 *SUBSTANTIAL COMPLETION  
CERTIFICATION*

Within ten (10) days after receiving the Contractor's Application for Certification of Substantial Completion, the Project Manager shall review the Work and identify any remaining unfinished or nonconforming Work. If the Project Manager agrees that the Work is Substantially Complete, HAKC shall issue a Certificate of Substantial Completion, along with a punch list that describes any remaining unfinished or nonconforming Work. If the Project Manager determines that the Work is not Substantially Complete, the Contractor shall repair unfinished or nonconforming Work, and submit another Application for Certification of Substantial Completion. The Contractor shall pay all costs associated with the Contractor's second, and subsequent, Applications for Certification of Substantial Completion.

20.6 *PARTIAL SUBSTANTIAL  
COMPLETION:*

The Project Manager may, in his sole discretion, certify less than all of the Work as Substantially Complete. The Project Manager may require the Contractor to prepare and submit a List of Unfinished and Nonconforming Work for any designated portion of the Work. When the Contractor has performed all of the Work identified on such list, the Contractor shall submit to the Project Manager an Application for Certification of Substantial Completion for the designated portion of the Work, containing a notarized statement that: (1) the governing codes administration authorities have approved each building for the designated portion of the Work; and, (2) the Contractor has obtained certificates of occupancy for each building on the designated portion of the Work. If the Project Manager agrees that the designated portion of the Work is complete, they may issue a Certificate of Substantial Completion that identifies the substantially completed portion of the Work. A Certificate of Final Completion shall not be issued for less than all of the Work.

20.7 *FINAL COMPLETION  
APPLICATION*

After performing all Work required by the punch list, the Contractor shall submit to the Project Manager a written Application for Certificate of Final Completion, that includes a notarized statement that: (1) the Contractor has completed all Work in compliance with the Specifications, Drawings and this Agreement; and, (2) the Work is free from violations of federal, state and local environmental laws, regulations and ordinances and (3) all Work has met Industry Standards.

20.8 *FINAL COMPLETION  
CERTIFICATION*

Within ten (10) days after receiving the Contractor's Application for Certificate of Final Completion, the Project Manager shall review the Work and identify any remaining unfinished or nonconforming Work. If the Project Manager agrees that all Work is complete and complies with the Specifications, Drawings and this Agreement, HAKC shall issue a Certificate of Final Completion. If the Project Manager determines that any Work is incomplete or fails to comply with the Specifications, Drawings or this Agreement, the Contractor's Application for Certification of Final Acceptance shall be denied, and the Contractor shall complete or correct the Work and submit another Application for Certification of Final Completion. The Contractor shall pay all costs associated with the Contractor's second, and subsequent, Applications for Certification of Final Completion.

20.9 *EFFECT OF CERTIFICATES:*

The issuance of a Certificate of Substantial Completion or a Certificate of Final Completion shall not release the Contractor from liability for defective Work or Work that fails to comply with the Specifications or Drawings to the extent that such defect or nonconformity is not readily evident from visual of the Work Site.

20.10 *DELETION*

Sub clause 20(j) of the General Conditions shall be deleted entirely.

**Article 1-20 Purposely Omitted**

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

21.1 *COORDINATION & OCCUPANCY  
CERTIFICATION*

HAKC may use and possess the Work Site and completed and partially completed portions of the Work. The Contractor shall coordinate the Work to facilitate HAKC's use and possession of the Work Site and completed or partially completed portions of the Work. The Contractor shall obtain certificates of occupancy from the appropriate authorities before HAKC or HAKC Residents occupy the Work.

21.2 *NOTICE OF DELAY*

The Contractor immediately shall provide written notice to the Project Manager if the Contractor believes that HAKC's use or possession of the Work Site or the Work will delay or hinder, or has delayed or hindered, performance of the Work. The Contractor shall waive its rights to damages, an extension of time or other relief

for such delay or hindrance, if the Contractor fails to submit such written notice within seven (7) days after commencement of the delay or hindrance.

## Article 22 Purposely Omitted Article

### 23 Warranty of Construction

#### 23.1 *WARRANTY OBLIGATIONS*

The Contractor shall restore or remove-and-replace warranted Work to its originally specified condition, during the warranty period if the Work does not comply with or fulfill terms of warranty. The Contractor shall restore or remove-and-replace other Work which has been damaged by failure of warranted Work, or which must be removed and replaced to gain access to warranted Work. The Contractor shall pay the cost of restoration or removal-and-replacement without regard to whether HAKC has already benefited from use of failing Work.

#### 23.2 *HAKC'S RECOURSE*

The Contractor's warranties and warranty periods shall not diminish implied warranties, and shall not deprive HAKC of actions, rights or remedies otherwise available as a result of Contractor's failure to fulfill requirements of this Agreement. HAKC reserves the right to reject coincidental product warranties considered to be conflicting with or detracting from requirements of this Agreement.

### Article 24 Prohibition against Liens

#### 24.1 *PARTIAL LIEN WAIVERS*

The Contractor shall attach to every Application for Payment, a notarized Partial Lien Waiver that completely disclaims and waives the Contractors' right to file or maintain a lien against HAKC's property, to the extent of payments previously made to the Contractor. The Contractor shall fully pay, in a timely manner, all Subcontractors, and all agents, persons or entities claiming by or through such Subcontractors. The Contractor shall obtain and attach to every Application for Payment, a notarized Partial Lien Waiver from every Subcontractor that disclaims and waives the Subcontractor's right to file or maintain a lien against any HAKC property, to the extent of payments previously made to such Subcontractor.

#### 24.2 *FINAL LIEN WAIVER & RELEASE*

The Contractor shall attach to its Application for Final Payment a notarized Final Lien Waiver and Release that completely disclaims and waives the Contractor's right to file or maintain any lien against HAKC's property. The Contractor shall obtain and attach to its Application

for Final Payment a notarized Final Lien Waiver and Release from every Subcontractor that completely disclaims and waives the Subcontractor's right to file or maintain a lien against HAKC's property. Both Contractor and HAKC agree and understand that said Final Lien Waiver & Release shall be effective upon Contractor's receipt of the final payment from HAKC.

#### 24.3 *BOND IN LIEU OF LIEN WAIVER*

If any Subcontractor fails or refuses to furnish a valid or complete Lien Waiver, or Final Lien Waiver and Release, the Contractor shall furnish a bond satisfactory to HAKC to indemnify HAKC against any claim by lien or otherwise.

#### 24.4 *UNSATISFIED LIENS & CLAIMS*

If any lien or claim remains unsatisfied after Final Payment, the Contractor shall refund to HAKC all monies necessary to discharge such lien or claim, and shall compensate HAKC for all costs, reasonable attorney's fees, and other damages relating to the lien or claim.

### Article 25 Contract Period/Schedule for Performance

The Contractor agrees and acknowledges that time is of the essence in the performance of this Agreement. The Work shall be performed and completed within the Contract Time and according to the schedule contemplated in this Article 25.

#### 25.2 *SCHEDULE*

The Contractor agrees and acknowledges that all of the Work shall be completed within **One hundred and Twenty (120) calendar days** from the date the HAKC provides the Contractor with the Notice to Proceed. Specifically, in order to establish the completion of the Work the Contractor agrees that it will provide to the HAKC certificate(s) of substantial completion within **Fifty-four (54) calendar days** from the date of the completion. Contractor further agrees that said certificate(s) must be satisfactory to the HAKC before the certificate(s) of substantial completion can be used to establish that the performance of the work was accomplished within the Contract time frame.

#### 25.3 **ACCESS TO SITE/COMMITMENT TO SCHEDULE**

HAKC promises to give the Contractor access to the entire construction Work Site on the date that HAKC provides the Contractor with the Notice to Proceed.

Contractor agrees that it has reviewed the specifications, drawings and any and all other documents, records, and materials that are necessary in order to make its promise that it can perform and complete all of the Work within **60 Calendar Days** from the date of the Notice to Proceed.

25.4 *DELETION*

Clause 25 of the General Conditions shall be deleted entirely.

**Article 26 Purposely Omitted**

**Article 27 Payments**

**27.1 CONTRACT PRICE & TAXES**

HAKC agrees to pay, and the Contractor agrees to accept as payment, for the performance of this Agreement, the sum of: **XXXXX**. The Contractor shall pay all taxes and contributions measured by wages, which may be applicable to this Agreement. Personal property and materials purchased for the purpose of constructing the Work is exempt from sales tax. The HAKC shall furnish to the Contractor a tax exemption certificate authorizing the purchase of personal property and materials for the construction, repair and remodeling of the Work. The Contractor shall furnish such certificate to all Subcontractors. When the Contractor and/or any Subcontractor purchases personal property or materials, the Contractor and/or Subcontractors shall present the tax exemption certificate to the materials supplier as authorization to purchase on behalf of HAKC all tangible personal property and materials to be consumed in or incorporated into the Work. The Contractor shall retain all invoices for all personal property and materials consumed in or incorporated into the Work for a period of five (5) years.

27.2 *PRICE BREAKDOWN:*

The Contractor shall submit a breakdown of the Contract Price ("Price Breakdown") in triplicate to the Contracting Officer, in accordance with Clause 27(c) of the General Conditions. The Price Breakdown shall be prepared on form HUD-51000, Schedule of Amounts for Contract Payments. The Price Breakdown shall project costs of major aspects of the Work, and identify separately the dollar values of each Subcontract and contracts with Minority Businesses and Women's Business Enterprises. No payments shall be due until the Price Breakdown is submitted in a form satisfactory to the Project Manager.

27.3 **SUBMISSION OF PAYMENT APPLICATION**

**Upon Contractor's completion of the Work and issuance of the Certificate of Substantial Completion, Contractor shall submit the Payment Application to the Project Manager for processing. The Application for Payment shall request payment for the labor and materials incorporated into the Work and materials suitably stored during the preceding calendar months, less the aggregate of previous payments and specified retainage.**

27.4 *FORM OF PAYMENT APPLICATIONS*

The Contractor shall include the following items in every Application for Payment, in a form satisfactory to the Project Manager:

A. *Cover Letter:* The Contractor shall submit a cover letter that: (1) identifies the Project; (2) assigns a number to the Application for Payment; and, (3) contains a detailed list of enclosures.

B. *Price Breakdown:* The Contractor shall submit a copy of the Price Breakdown, prepared in accordance with Paragraph 27.2.

C. *Periodic Estimate for Partial Payment:* The Contractor shall complete and submit form HUD-51001, Periodic Estimate for Partial Payment.

D. *Change Order Documentation:* The Contractor shall complete and submit form HUD-51002, Schedule of Change Orders. The Contractor shall submit a copy of every Change Order issued by the Contracting Officer.

E. *Stored Materials Documentation:* If the Application for Payment requests payment for materials stored, but not yet incorporated into the Work, the Contractor shall: (1) complete and submit form HUD-51003, Schedule of Materials Stored; (2) complete and submit form HUD-51004, Summary of Materials Stored; and, (3) submit other documentation required by Clause 27(g) of the General Conditions. Such documentation of stored materials shall identify: (1) the Contractor or Subcontractor responsible for storing such materials; and, (2) the location where such materials are stored. Form HUD-51003 shall be signed by the employees of the Contractor that prepare and verify such form.

F. *Statement of Compliance:* The Contractor shall complete and submit Department of Labor form WH-348, Statement of Compliance. The Contractor shall also obtain and submit Department of Labor forms WH-348, prepared by each Subcontractor performing Work during the month for which payment is requested.



G. *Payroll Documentation*: The Contractor shall complete and submit Department of Labor form WH-347, Payroll.

H. *Certificate Regarding Payment*: The Contractor shall complete and submit the certification regarding payment, required by Clause 27(e) of the General Conditions.

I. *Construction Progress Schedule*: The Contractor shall update and submit its Schedule, as required by Article 6, within one week preceding the submission of its Application for Payment.

J. *Certificate and Release*: The Contractor shall complete and submit a Certificate and Release, on HAKC's current form.

K. *Partial Lien Waivers*: Contractor shall execute and submit Partial Lien Waivers applicable to the Contractor and every Subcontractor as required by Article 24. The Contractor shall also submit all previously executed Partial Lien Waivers.

L. *Other Documents*: In addition to the above, the Contractor shall submit other documentation, if any, required by this Agreement.

#### 27.5 PAYMENT CERTIFICATE

After receiving the Contractor's Application for Payment, the Project Manager shall either issue to the Contracting Officer a Certificate for Payment for such amount as the Project Manager determines is properly due, or notify the Contracting Officer of its reasons for rejecting the Application for Payment, in whole or in part. The Project Manager shall return the Application for Payment to the Contractor within seven (7) days after receiving such application, and shall specify the reason(s) for returning the application, if the Project Manager determines: (1) the Application for Payment lacks adequate substantiating data; or, (2) the form of the Application for Payment is unsatisfactory.

#### 27.6 PAYMENT

Within thirty (30) days after the Project Manager receives the Contractor's Application for Payment, the Contracting Officer shall either pay the Contractor the amount certified by the Project Manager or notify the Contractor of its reasons for withholding payment, in whole or in part.

#### 27.7 REJECTION OF PAYMENT APPLICATION

The Project Manager or the Contracting Officer may reject an Application for Payment (including an Application for Final Payment) or withhold payment, in whole or in part, to the extent reasonably necessary to protect the interests of HAKC. Applications for

Payment (including an Application for Final Payment) may be rejected and payment may be withheld from the Contractor for reasons including, but not limited to, the following: (1) citation by a public agency or authority for acts of the Contractor or any Subcontractor which violate any federal, state or local law, regulation or ordinance; (2) liquidated damages; (3) unsatisfactory progress; (4) defective Work not remedied; (5) disputed Work; (6) failure to strictly comply with any provision of this Agreement; (7) third party claims filed, or reasonable evidence that such claim will be filed, as a result of the Work or the Contractor's conduct; (8) failure to make timely payment for labor, equipment or materials; (9) reasonable evidence that a Subcontractor cannot be fully compensated under its contract with the Contractor for the unpaid balance of the Contract Price; and, (10) damage to another contractor, Subcontractor.

#### 27.8 EFFECT OF PAYMENT

The issuance of a Certificate for Payment and the making of payment to the Contractor shall not represent that the Project Manager or Contracting Officer has: (1) made exhaustive or continuous on-site inspections to check the quantity of the Work; (2) reviewed the Contractor's means, methods, techniques, sequences or procedures; (3) reviewed copies of requisitions received from Subcontractors to substantiate the Contractor's right to payment; or (4) attempted to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Price. The issuance of a Certificate for Payment and the making of payments under this Agreement shall not be evidence of the satisfactory performance of the Work, in whole or part. The issuance of a Certificate for Payment and the making of payments shall not be construed as an acceptance of defective Work or improper materials.

#### 27.9 ERRONEOUS PAYMENT APPLICATION

If the Contractor, after submitting an Application for Payment or an Application for Final Payment, discovers that a portion or all of such application requested payment for Work that fails to conform to the Specifications, Drawings, or this Agreement, then the Contractor shall: (1) notify the Contracting Officer of such performance deficiency; and (2) pay HAKC interest on the value of the nonconformity (computed in the manner provided in 5 U.S.C. § 3909(c)) from the date of the Contractor's receipt of payment for the deficient Work until: (A) the date the Contractor notifies the Contracting Officer that the nonconformity has been corrected; or (B) the date that the Contractor reduces the amount of any subsequent Application for Payment by an amount equal to the value of the nonconformity.

#### 27.10 RETAINAGE

The Contracting Officer shall retain no more than ten percent (10%) of each payment to the Contractor.

Within thirty (30) days after Certification of Substantial Completion and upon receipt of Contractor's invoice, HAKC shall pay the retainage to the Contractor, less two times (2X) the dollar value of any unfinished or nonconforming Work, and less the dollar value of any claims asserted by HAKC and other deductions authorized by this Agreement or permitted by law.

#### 27.11 FINAL PAYMENT APPLICATION

The Contractor shall submit an Application for Final Payment to the Project Manager after issuance of the Certificate of Final Completion. In addition to the items required in every Application for Payment, the Application for Final Payment shall include the following:

A. *Certificate of Completion-Consolidated*: The Contractor shall submit a Certificate of Completion-Consolidated, on HAKC's current form.

B. *Warranties & Manuals*: The Contractor shall submit all written warranties, guarantees, maintenance agreements, workmanship bonds and manuals relating to the Work or components thereof.

C. *Release of Claims*: The Contractor shall submit a release of all claims against HAKC arising by virtue of this Agreement, other than claims, in stated amounts, that the Contractor has specifically accepted from the release. If any claims are accepted from the release, the Contractor shall clearly define the basis and scope of each individual claim. The Contractor shall not request payment for accepted claims in its Application for Final Payment.

D. *Final Lien Waiver & Release*: The Contractor shall execute and submit a Final Lien Waiver and Release. The Contractor also shall obtain and submit a Final Lien Waiver and Release from every Subcontractor.

E. *Wages, Hours & Dismissal Rights Affidavit*: The Contractor shall submit an affidavit stating that it has fully complied with the provisions and requirements of Chapter 290, Wages, Hours and Dismissal Rights, of Missouri's Revised Statutes. The Contractor shall submit similar affidavits that it has obtained from each Subcontractor, after the Subcontractor has completed its portion of the Work.

F. *Stock & Parts*: The Contractor shall submit evidence that extra stock and spare parts, tools, and keys required by this Agreement, if any, have been submitted to the Project Manager or placed in approved storage areas at the Work Site.

#### 27.12 FINAL PAYMENT CERTIFICATE

After receiving the Contractor's Application for Final Payment, the Project Manager shall either issue to the Contracting Officer a Certificate for Final Payment for such amount as the Project Manager determines is properly due or notify the Contracting Officer of its reasons for rejecting the Application for Final Payment, in whole or in part. The Project Manager shall return the Application for Final Payment to the Contractor within seven (7) days after receiving such application, and shall specify the reason(s) for returning the application, if the Project Manager determines: (1) the Application for Final Payment lacks adequate substantiating data; or, (2) the form of the Application for Final Payment is unsatisfactory.

#### 27.13 FINAL PAYMENT

Within thirty (30) days after the Project Manager receives the Contractor's Application for Final Payment, the Contracting Officer shall either pay the Contractor the amount certified by the Project Manager or notify the Contractor of its reasons for withholding Final Payment, in whole or in part. The Contracting Officer shall not make Final Payment to the Contractor, unless or until the Contractor submits the affidavits required by RSMo. § 290.290, concerning compliance with Chapter 290, Wages, Hours, and Dismissal Rights, of Missouri's Revised Statutes.

#### 27.14 DELETION

Sub clauses 27(b), 27(d), 27(f) and 27(i) of the General Conditions shall be deleted entirely.

#### Article 28 Contract Modifications

##### 28.1 DELETION

Clause 28 of the General Conditions, including all Sub clauses of Clause 28, shall be deleted entirely.

#### Article 29 Changes

##### 29.1 PERFORMANCE OF CHANGED WORK

The Contractor shall not perform Work-requiring reimbursement in addition to the Contract Price, or extensions of the Contract Time, without receiving a prior written Change Order issued by the Project Manager and signed by the Contracting Officer.

##### 29.2 CHANGE ORDER APPLICATIONS

If the Contractor believes that any instruction, act or event justifies a change in the Contract Price, the Contract Time, or other provision of this Agreement, the Contractor shall submit to the Project Manager a written Application for a Change Order.

##### 29.3 DELAYS:

29.3a. *Sources of Delay Claims*: If the Contractor is delayed at any time while performing the Work by labor disputes, fire, extraordinary adverse weather conditions not reasonably anticipatable, unavoidable casualties, environmental hazards or any cause which the Contractor believes justifies an extension of time, the Contractor shall submit to the Project Manager an Application for a Change Order, seeking an extension of the Contract Time.

29.3b. *Critical Path Delays*: In no event shall the Contract Time be extended as the result of a delay, unless work, which is critical to the Progress Schedule, has been delayed.

29.3 c. *Weather Delays*: If adverse weather conditions are the basis for the Contractor's Application for a Change Order, such application shall be documented by data substantiating that: (1) weather conditions were abnormally severe for month in which such conditions occurred, and could not have been reasonably foreseen; (2) such weather conditions delayed the scheduled construction; and, (3) the Contractor did not contribute to the delay in the construction. The Contractor shall not be awarded a Change Order due to adverse weather conditions if the Contractor fails to submit such documentation to the Project Manager.

#### 29.4 *CONTENT OF CHANGE ORDER APPLICATION*

The Contractor's Application for a Change Order shall provide a detailed explanation of the change requested, including, but not limited to: (1) facts giving rise to such Application for a Change Order; (2) the identification, quantity, and cost of machinery, equipment and materials associated with the change; (3) a description of the types, hours and pay rates of laborers required by such change; (4) the amount of additional time required for performance of the change; (5) information and dates indicating whether, and to what extent, the change will delay the completion of the Work in its entirety; (6) transportation and delivery costs associated with the change; (7) costs of preparation and/or revision to specifications or Drawings resulting from the change; (8) any increase in insurance or bond premiums; (9) increases or decreases in the use or funding of Minority Businesses or Women's Business Enterprises; and, (10) such other information, if any, that may be required by the Project Manager or the Specifications.

#### 29.5 *ACTUAL COSTS*

The Contractor's Application for a Change Order shall state the Contractor's actual cost of furnishing machinery, equipment, materials and labor, without including amounts for the Contractor's overhead or

profit. If requested by the Project Manager, the Contractor shall submit satisfactory evidence that it's Application for a Change Order does not include amounts for overhead or profit.

#### 29.6 *TIME FOR CHANGE ORDER APP.:*

Contractor shall assert its written Application for a Change Order to the Project Manager within seven (7) days after the occurrence of the act or event giving rise to such request. Failure by Contractor to submit its written Application for a Change Order within the preceding time shall constitute a waiver of the Contractor's rights, if any, to an adjustment of the Contract Price, the Contract Time or other provision of this Agreement.

#### 29.7 *CHANGE ORDER APPLICATION DECISIONS*

Within thirty (30) days after receiving the Contractor's Application for a Change Order, the Contracting Officer shall grant or deny the Contractor's application or notify the Contractor of the date when such action will be taken. If the Contracting Officer grants the Contractor's Application for a Change Order, in whole or in part, the Project Manager shall issue a written Change Order, as provided below. If the Contracting Officer denies the Contractor's Application for a Change Order, the Contractor may pursue its claim under Article 31, Disputes.

#### 29.8 *ISSUANCE OF CHANGE ORDERS*

The Contracting Officer may, at any time, make changes to this Agreement, including but not limited to changes in: (1) the Scope of the Work; (2) the method of performing the Work; and (3) the rate of performance of the Work. Notwithstanding any provision to the contrary, this Agreement cannot be orally modified. All changes shall be made in a writing signed by the Contracting Officer and describing the change ("Change Order").

#### 29.9 *CONTENT OF CHANGE ORDERS*

All Change Orders shall include: (a) a detailed description of the change in the Work, including a reference to applicable Specifications and Drawings; (b) the extent of the adjustment in the Contract Price, if any; and, (c) the extent of the adjustment in the Contract Time, if any.

#### 29.10 *OVERHEAD AND PROFIT*

If a Change Order increases the Contract Price, the Contracting Officer may include amounts for overhead and profit in the dollar value of the Change Order. The Contracting Officer, in its sole discretion, shall determine the amount of overhead and profit in accordance with the Specifications.

29.11 *PERFORMANCE OF CHANGES*

The issuance of Change Orders shall not invalidate this Agreement. Unless expressly provided otherwise in writing, the Contractor shall perform all changed Work in compliance with the terms and conditions of this Agreement.

29.12 *DELETION*

Clause 29 of the General Conditions, including all Sub clauses of Clause 29, shall be deleted entirely.

**Article 30 Purposely Omitted**

**Article 31 Disputes**

31.1 *CLAIMS DEFINED*

The term "Claim" as used in this Article 31, means a demand or assertion by the Contractor seeking payment of money, the adjustment or interpretation of Agreement terms, or other relief arising under or relating to this Agreement. Applications for Change Orders pursuant to Article 29, Changes, and routine Applications for Payment shall not constitute Claims.

31.2 *SUBMISSION OF CLAIMS*

Within thirty (30) days after the Contractor knows, or should have known, the facts giving rise to a Claim, the Contractor shall submit its Claim(s) in writing to the Project Manager. The Contractor acknowledges that HAKC will be prejudiced if the Contractor fails to submit its Claim(s) in the time provided. Failure by the Contractor to assert a written Claim within the time provided shall constitute a waiver of such Claim and all rights associated therewith.

31.3 *CONTINUED PERFORMANCE OF WORK*

Contractor shall proceed diligently with the performance of the Work required under this Agreement pending final resolution of any Claim or legal action arising under this Agreement and shall comply with any decision of the Contracting Officer.

31.4 *CONTENT OF CLAIM*

The Contractor's Claim shall provide a detailed description of the facts giving rise to such Claim and the nature and scope of the Contractor's demand. The Claim shall contain sufficient information to enable the Contracting Officer to make an informed decision concerning the Claim.

31.5 *DECISIONS REGARDING CLAIMS*

Within sixty (60) days after receipt of a written Claim, the Contracting Officer shall render a decision concerning the Claim. The Contracting Officer shall issue a written decision to HAKC and the Contractor, by certified mail, return receipt requested. Failure of the Contracting Officer to issue a decision within the sixty (60) day period shall have the effect of a denial of the Contractor's Claim. The Contracting Officer's decision with respect to a Claim shall be final and binding on Contractor subject to the remedy available pursuant to Article 50.13 in this Agreement.

31.6 *DELETION*

Clause 31 of the General Conditions, including all Sub clauses of Clause 31, shall be deleted entirely.

**Article 32 Default**

32.1 *HAKC'S RIGHT TO PERFORM WORK*

If Contractor fails or neglects to perform the Work properly or strictly comply with any provision of this Agreement, HAKC may, without prejudice to any other right or remedy HAKC may have, make good such deficiencies, and may deduct the cost thereof from the payment then or thereafter due the Contractor.

32.2 *TERMINATION FOR CAUSE*

32.2a. "Causes" for Termination: Any of the following conditions shall justify HAKC's termination of this Agreement "for cause": (1) the Contractor fails to prosecute the Work, or a separable part thereof, with the diligence that will insure its completion within the time specified in this Agreement; (2) the Contractor fails to complete the Work, or any separable part thereof, in the time specified in this Agreement; (3) the Contractor fails to make payment to a Subcontractor in accordance with the respective agreement between the Contractor and such Subcontractor; (4) the Contracting Officer determines that the Contractor has an Organizational Conflict of Interest; (5) the Contractor becomes subject to mandatory ineligibility to contract with HUD, under applicable laws and regulations; or, (6) the Contractor fails to strictly comply with this Agreement.

32.2b. Notice of Intent to Terminate for Cause: Upon occurrence of any of the conditions specified in the preceding paragraph, HAKC may give the Contractor written notice that: (1) specifies the condition constituting cause for termination; (2) provides a period of 10 days in which the Contractor may cure the condition; (3) informs the Contractor of HAKC's intent to terminate this Agreement if the Contractor fails to cure the condition during the ten (10) day period; (4) informs the Contractor of its contractual liabilities if this Agreement is terminated for cause; and, (5) requests the Contractor to show cause why this Agreement should not be terminated for cause.

32.2c. *Notice of Termination for Cause:* If the Contractor fails to cure the condition constituting cause for termination during the ten (10) day period, HAKC may terminate this Agreement for cause, by issuing a notice of termination to the Contractor.

32.2d. *Effect of Termination for Cause:* If this contract is terminated for cause, Contractor and its sureties shall be liable for any damage to HAKC resulting from Contractor's refusal or failure to perform the Work in compliance with this Agreement, including attorneys' fees, interest and any increased costs incurred by HAKC while completing the Work with replacement contractors.

32.2 e. *Unauthorized Termination for Cause:* If, after termination for cause, it is determined that such Termination for Cause was not authorized by this Article, then the rights and obligations of the parties will be the same as if this Agreement had been terminated for convenience pursuant to Article 34.

32.3 *DELETION*

Clause 32 of the General Conditions, including all Sub clauses of Clause 32, shall be deleted entirely.

**Article 33 Liquidated damages**

33.1 *AGREEMENT TO PAY LIQUIDATED DAMAGES*

In the event that the Contractor has not substantially completed the work within the contract time, plus agreed to time extensions, if any, then the Contractor hereby specifically agrees to pay the Owner, or to have deducted from the Contract Sum, the daily liquidated damage amount of \$75.00 for each calendar day in excess of the allotted contract time (as set forth below and in Article 25) that the Work remains substantially incomplete after such date(s) stipulated for Substantial Completion. The Contract time for the completion of Work is **Sixty (245) calendar days** from the date established by the formal Notice to Proceed.

33.2 *NO PENALTY - FAIR ESTIMATE OF HAKC'S DAMAGES*

The Contractor agrees and acknowledges that Article 33, which provides for the imposition of liquidated damages, is enforceable. Contractor acknowledges and agrees that at the time of the execution of this Agreement the HAKC's damages for the Contractor's late performance of the Work are incapable or very difficult of an accurate estimation. Furthermore, Contractor states that the liquidated damages set forth herein are a reasonable forecast of the just compensation for the harm that would be caused should Contractor fail

to perform the Work within the Contract Time. Based on the foregoing Contractor specifically states that these liquidated damages clause is not a penalty.

33.2 *RECOVERY OF LIQUIDATED DAMAGES*

HAKC shall be entitled to recover liquidated damages from the Contractor immediately as those damages accrue. HAKC may recover liquidated damages from the Contractor and/or set-off liquidated damages from amounts then or thereafter due the Contractor. Notwithstanding the assessment of liquidated damages, the Contractor shall be liable to HAKC for damages caused other than by delayed performance.

33.4 *DELETION*

Clause 33 of the General Conditions, including all Sub clauses of Clause 33, shall be deleted entirely.

**Article 34 Termination for Convenience**

34.1 *TERMINATION FOR CONVENIENCE DEFINED*

The Contracting Officer may, at any time, terminate this Agreement, in whole or in part, for HAKC's convenience and without cause.

34.2 *PROPOSAL OF AMOUNTS OWED*

If this Agreement is terminated for convenience, the Contractor shall submit a proposal to the Contracting Officer stating the Contractor's claim for all amounts owed ("Proposal"). The Proposal shall be submitted within fourteen (14) days after the effective date of termination.

34.3 *EFFECT OF TERMINATION. FOR CONVENIENCE*

The Contracting Officer shall not be bound by the Proposal but should consider the Proposal when determining the amount owed to the Contractor. The Contractor shall receive payment for the total value of the Work performed before termination for convenience, less the total amount of payments previously made to the Contractor and the amount of any claims that the HAKC asserts against the Contractor. If this Agreement is partially terminated for convenience, the Contracting Officer shall reduce the Contract Price in proportion to the percentage of work terminated.

34.4 *TERMINATION GENERALLY:*

34.4a. *Notice of Termination:* Termination of this contract shall be effected by delivery to the Contractor of written notice of termination, sent by certified mail,

return receipt requested, specifying: (1) whether the termination is for cause or convenience; (2) the extent to which the performance of the Work is terminated; (3) the effective date of termination; and, (4) any special instructions. If the contract is partially terminated, the notice of termination shall identify specific items being terminated and shall notify the Contractor of its obligation to proceed under the unexpired portion of the contract. If the contract is terminated for cause, the notice of termination additionally shall state: (1) the acts or omissions constituting cause for termination; (2) the Contracting Officer's determination that the Contractor's failure to perform is not excusable; and (3) HAKC's rights to charge excess costs of re-procurement and completion to the Contractor. Contractor shall deliver a copy of the notice of termination to its surety or sureties.

34.4 b. *Completion after Termination:* Upon the termination of this Agreement, for cause or convenience, HAKC may take over the Work and complete it by whatever method HAKC may deem expedient, may accept assignment of Subcontracts pursuant to Article 37 of this Agreement, and may take possession of and use all materials, equipment, and plant on the Work Site. Upon termination, the Contractor shall follow the Contracting Officer's instructions regarding the transition of the responsibilities, including immediate delivery to the Contracting Officer of all files, papers and records related to the Contractor's performance of this Agreement.

34.4.c. *Disputes Regarding Termination:* the provisions of Article 31, Disputes, shall govern Disputes relating in any way to termination.

34.5 *DELETION:*

Clause 34 of the General Conditions, including all Sub clauses of Clause 34, shall be deleted entirely.

**Article 36 Insurance and Bonds**

36.1 *COST OF INSURANCE*

The Contractor shall maintain all insurance required by this Agreement at the Contractor's own expense

36.2 *DIVISIONS OF CGL COVERAGE:*

The Commercial General Liability ("CGL") insurance required by Clause 36 of the General Conditions shall include the following divisions of coverage: (1) Premises Operations; (2) Independent Contractors' Protective; (3) Products and Completed Operations; and, (4) Broad Form Property Damage. The Contractor shall maintain the Products and Completed Operations coverage for two (2) years following Final Payment. The Broad Form Property Damage Coverage shall include Completed Operations. The CGL policy shall include coverage for property damage resulting from blasting, explosion, or collapse of buildings. The policy

limits of the CGL policy shall apply to liability relating to this Agreement only.

36.3 *CGL POLICY LIMITS*

The CGL policy shall contain policy limits of not less than the following:

**Liability/Bodily Injury:**

\$3,500,000.00 all claims for single occurrence.  
\$550,000.00 for any one person in a single occurrence

**Property Damage:**

\$500,000 each occurrence: and,

**Products and Completed Operations:**

\$500,000 each occurrence

36.4 *CONTRACTUAL LIABILITY COVERAGE*

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

Bodily Injury:

\$550,000 each occurrence; and,

Property Damage:

\$500,000 each occurrence

36.5 *AUTOMOBILE LIABILITY POLICY LIMITS*

The Automobile Liability insurance required by Clause 36 of the General Conditions shall contain policy limits of not less than the following:

Bodily Injury:

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

Property Damage:

\$500,000 each occurrence

36.6 *PERSONAL INJURY COVERAGE*

The Contractor shall maintain Personal Injury insurance, with the employment exclusion deleted, containing policy limits of not less than:

\$500,000 each occurrence

36.7 *WORKER'S COMPENSATION COVERAGE*

The Worker's Compensation insurance required by Clause 36 of the General Conditions, shall contain

policy limits equal to, or greater than, the policy limits required by state or federal law, and not less than:

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

36.8 *NAMED INSURED*

HAKC shall be a named insured on all insurance policies required by this Agreement.

36.9 *NON-WAIVER OF SOVEREIGN IMMUNITY*

The HAKC is a public entity and political subdivision of the State of Missouri and is protected by the doctrine of sovereign immunity pursuant to Section 537.600 RSMo. The foregoing provisions requiring insurance coverage shall not be deemed a relinquishment or waiver of any kind of limitations of liability provided or available to HAKC under 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 waiver, not is it a waiver of any defense available to the insured by statute or at common-law.

**Article 37 Subcontracts**

37.1 *APPROVAL OF SUBCONTRACTORS*

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

37.2 *HAKC AND SUBCONTRACTORS*

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

37.3 *ASSIGNMENT OF SUBCONTRACTS*

The Contractor shall incorporate a clause in every Subcontract that authorizes assignment of such Subcontract from the Contractor to HAKC in the event that: (1) the Contractor is terminated pursuant to Articles 32 or 34 of this Agreement; and, (2) HAKC accepts assignment of such Subcontracts within ten (10)

business days after the date of termination by notifying the Subcontractor in writing.

37.4 *FLOW-DOWN OF OBLIGATIONS*

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

37.5 *SUBSTITUTION OF SUBCONTRACTORS:*

The Contractor may substitute Subcontractors or modify agreements with Subcontractors only after obtaining written approval of the Contracting Officer. If such substitutions or changes would result in the Contractor failing to meet the employment standards or other requirements set forth in this Agreement, the Contractor shall submit a request for waiver of such requirements to the Contracting Officer.

37.6 *PAYMENT OF SUBCONTRACTORS*

The Contractor shall include clauses in each Subcontract that: (1) require the Contractor to pay the Subcontractor under its Subcontract, within seven (7) days after the Contractor receives payment under this Agreement for satisfactory Work performed, or materials or services supplied by the Subcontractor; (2) obligate the Contractor to pay to the Subcontractor an interest penalty on late payments, beginning on the day after payment is due and ending on the day payment is made (and computed at the rate specified in 5 U.S.C.

§ 3902(a)); and, (3) require the Contractor to include in each of its Subcontracts a provision requiring the Subcontractor to include a payment clause and an interest penalty clause conforming to the standards of (1) and (2) of this Paragraph, in each of the Subcontractor's Subcontracts, and a clause requiring each of the Subcontractor's Subcontractors to include such clauses in their Subcontracts with lower-tier Subcontractors.

37.7 *RETAINAGE*

Contractor shall not withhold retainage in excess of ten percent (10%) of a Subcontract's value.

37.8 *WAGES & HOURS AFFIDAVIT*

After each Subcontractor completes its portion of the Work, the Contractor shall obtain from the Subcontractor an affidavit stating that the Subcontractor has fully complied with the provisions and requirements of Chapter 290, Wages, Hours and Dismissal Rights, of Missouri's Revised Statutes.

**Article 38 Purposely Omitted**

**Article 39 Equal Employment Opportunity**

39.1 *EMPLOYMENT PROGRAM*

The Contractor shall implement a program ("Program") for training and employing HAKC Residents consistent with the instructions of the Contracting Officer and in compliance with the requirements set forth in the bid packet. The Contractor shall submit a detailed description of its proposed Program at the time of submitting its bid.

39.2 *MINORITY AND WOMEN'S BUSINESSES*

The Contractor shall refrain from any discriminatory employment practice and shall implement any affirmative action program(s) required by the contract documents, bid documents or applicable law. If the Contractor fails, refuses or neglects to comply with this paragraph, such action shall be deemed a total breach of this Agreement and this Agreement may be terminated, canceled or suspended, in whole or in part, and the Contractor may be declared ineligible for future contracts.

**Article 40-46 Purposely Omitted**

**Article 47 Labor Standards: Davis-Bacon and Related Acts**

47.1 *COMPLIANCE AND INDEMNIFICATION*

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

stating that the Contractor has fully complied with the Davis-Bacon Act.

**Article 48-49 Purposely Omitted**

**Article 50 Miscellaneous**

50.1 *CONFLICTS OF INTEREST*

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

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

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

50.2 *ENVIRONMENTAL HAZARDS:*

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

50.2 b. *Hazardous Waste:* If the Contractor encounters on the site material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), or other hazardous substance .....s regulated by federal, state or local laws, Contractor shall immediately stop its Work in the area affected and reports the condition to HAKC. Work in the affected area shall thereafter be resumed immediately following the occurrence of any one of the following events: (1) HAKC causes remedial work to be performed which results in the absence of the hazardous materials; (2) HAKC and the Contractor, by written agreement, decide to resume performance of the Work; or, (3) an appropriate governmental authority



determines that the Work may safely and lawfully proceed, as evidenced by a written report to that effect. Notwithstanding any provision to the contrary, the Contractor shall be solely responsible for the removal, handling, transportation, and disposal of all hazardous waste either produced on or brought to the Work site by Contractor or any Subcontractor.

#### 50.4 *CONTRACT DOCUMENTS*

50.4a. *Component Parts:* This Agreement shall consist of the following component parts: (1) this document, entitled Agreement Between HAKC and Contractor; (2) General Conditions of the Contract for Construction, form HUD-5370; (3) Change Orders issued by the Contracting Officer; and (4) The Scope of Work and (5) the Contractor's Proposal, if any.

50.4b. *Contradictions:* In the event that any provision in any component part of this Agreement contradicts or conflicts with any provision of any other component part, the provision of the component part first enumerated in Paragraph 50.4.A, shall govern, except as otherwise specifically stated.

50.4c. *Illegality & Invalidity:* If any provision of this Agreement is determined to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect. It is the intention of the parties that if any such provision is held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is possible which is legal, valid and enforceable.

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

#### 50.5 *CONFIDENTIAL INFORMATION*

All information received by the Contractor regarding this Agreement and the Work shall be considered non-public and confidential. Contractor hereby acknowledges that said information is deemed non-public information, and Contractor shall not disclose any such information to third parties without the prior written approval of HAKC, except as necessary for performance of the Work.

#### 50.6 *NON-WAIVER*

Failure of HAKC to insist upon strict performance of the terms and conditions of this Agreement or to exercise any right or remedy hereunder shall not be construed as thereafter waiving any such terms, conditions, rights or remedies. No action or failure to act by HAKC shall constitute a waiver of any right of HAKC under this Agreement, nor shall any such action

or failure to act constitute an approval or acquiescence of any breach hereunder. Waiver of any breach of this Agreement shall not constitute a waiver of any subsequent breach of the same or any other provision hereof.

#### 50.7 *CONSTRUCTION OF THIS AGREEMENT*

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

#### 50.8 *NOTICES:*

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

#### 50.9 *EMERGENCIES*

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

#### 50.10 *TITLES, HEADINGS & SUBHEADINGS*

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

#### 50.11 *COUNTERPARTS*

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

#### 50.12 *CHOICE OF LAWS*

This Agreement shall be interpreted in accordance with the laws of the State of Missouri.

Housing Authority  
Kansas City, Mo  
General Rehab  
1305 Highland Unit #4  
KCMO 64106

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

HOUSING AUTHORITY OF KANSAS CITY, MISSOURI

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

Date: \_\_\_\_\_, 2024

and the Contractor: \_\_\_\_\_

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

\_\_\_\_\_  
Print Name & Title

\_\_\_\_\_  
Tax Identification Number

Date: \_\_\_\_\_, 2024