

# REQUEST FOR PROPOSALS (RFP) No. 2018-A, Annual Audit Services

## Supplemental Instructions to Proposers & Contractors (SIPC) (RFP Attachment F)

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**Supplemental Instructions to Proposers & Contractors (SIPC)  
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**1.0 GENERAL CONDITIONS.**

- 1.1 Applicability.** If referred to within the text of such, these SIPC shall be applicable to all Request for Proposals (RFP) solicitations that the Kearney Housing Agency (hereinafter, "the Agency") conducts and shall be applicable to any contract that the Agency awards to or signs with any firm, agency or individual pursuant to that RFP. A copy of these SIPC shall be made available to any actual or prospective proposer, or Contractor who does business with or intends to do business with the Agency.
- 1.1.1 HUD Forms.** Unless otherwise specified within the RFP or contract documents, in the event that any provision in any document listed herein conflicts with any provision within these SIPC, the provision in the RFP or contract document shall govern. Further, in the case of any attached HUD forms (more specifically: HUD-5369-C (8/93); HUD-5369-B (8/93); and HUD-5370-C (01/2014), Section I and/or Section II), the information within such HUD form(s) shall govern any other information issued, especially that issued within any Agency-created forms that are issued as a part of this solicitation.
- 1.2 Definitions** (pertaining to all RFP documents issued by the Agency pertaining to this RFP, including the attachments and the ensuing contract):
- 1.2.1 "Agency"** is the Kearney Housing Agency (NOTE: Please also see the 1<sup>st</sup> paragraph of the Introduction on page 3 of the RFP 1.0 Document issued). Unless otherwise defined herein or within the ensuing contract, whenever the term "the Agency" is used without clearly designating a responsible Agency staff person, the proposer(s) shall assume that responsibility for that item rests with the named CO.
- 1.2.2 "CEO"** is the Chief Executive Officer.
- 1.2.3 "Contract"** refers to the fully executed written agreement that ensues from the RFP. Whereas all RFP documents are included, by reference, as a part of the ensuing contract, when "contract" is referred to within the RFP Document, such is referring to both the RFP documents and the ensuing contract document.
- 1.2.4 "Contracting Officer (CO)"** - When named within an RFP document shall refer to either the CEO or the person he/she has delegated such responsibilities to.
- 1.2.5 "Contractor"** and the term "successful proposer" may be used interchangeably.
- 1.2.6 "Days"** unless otherwise directed, shall refer to calendar days.

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- 1.2.7 "Herein" shall refer to all documents issued pursuant to the noted RFP, including the RFP documents and the attachments.
- 1.2.8 "HUD" is the United States Department of Housing and Urban Development. HUD is the Federal agency that the Agency receives some funding from; however, pertaining to this RFP, correspondences, including proposal submittals, received from each proposer must exhaust all provisions contained herein prior to contacting HUD (i.e. in the case of a protest).
- 1.2.9 "Offer" is the proposal submittal referred to within the following Section 1.2.14 that the proposer delivers to the Agency in response to the RFP.
- 1.2.10 "Offeror" or "Offerors" are the proposer or proposers.
- 1.2.11 "Parties" - When "the parties," "both parties," or "either party" is stated within the RFP documents or the contract, such refers to the Agency and the successful proposer(s).
- 1.2.12 "Proposal" and/or "Proposal Submittal" is the "hard copy" document that the proposer is required to, as detailed within the RFP document, deliver to the Agency.
- 1.2.13 "Protestant" is a prospective proposer or proposer who feels that he/she has been treated inequitably by the Agency and wishes the Agency to correct the inequitable condition or situation. To be eligible to file a protest with the Agency pertaining to an RFP or contract, the protestant must have been involved in the RFP process in some manner as a prospective proposer (i.e. registered and received the RFP documents).
- 1.2.14 "Prospective Proposer" or "Proposer" - A prospective proposer is a firm or individual who has been notified of the RFP solicitation and/or who has requested and/or received the RFP documents and is considering responding with a proposal; a proposer is a firm or individual who has submitted a proposal in response to the RFP. All terms and conditions shall apply equally to all prospective proposers as well as proposers, though prospective proposers may not, after the deadline set for receiving proposals, receive further notices pertaining to that RFP—meaning, certain notices (such as the Notice of Results of Evaluation) are typically only delivered to proposers and not to all prospective proposers.
- 1.2.15 "Request for Proposals" (RFP) is the competitive proposal process allowed by HUD, especially as defined within Chapter 7 of HUD Procurement Handbook 7460.8 REV 2.
- 1.2.16 "RFP Document(s)" - Whether stated in the singular or the plural, such refers to the body of documents, including attachments and the information posted on the eProcurement Marketplace that the Agency makes available to all prospective proposers and wherein is detailed the Agency's requirements.

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1.2.17 “Solicitation” or “Competitive Solicitation” is the RFP process detailed herein.

**2.0 CONDITIONS TO PROPOSE.**

**2.1 Pre-Qualification of Proposers.** Prospective proposers will not be required to pre-qualify in order to submit a proposal. However, all proposers will be required to submit adequate information showing that the proposer is qualified to perform the required work (i.e. Profile of Firm Form and required resumes). Failure by the prospective proposer to provide the requested information may, at the Agency’s discretion, eliminate that proposer from consideration, provided that all proposers were required to submit the same information (in the case of a successful proposer(s), these requirements shall also apply in the context of the successful proposer or proposers).

**2.2 RFP Forms, Documents, Specifications, and Drawings.**

**2.2.1** It shall be each prospective proposer’s responsibility to, prior to submitting a proposal in response to the RFP, examine carefully and, as may be required, properly complete and submit all documents issued pursuant to this RFP.

**2.2.2** Unless otherwise instructed, specifications and drawings (if provided) do not purport to show all the exact details of the work. They are intended to illustrate the character and extent of the performance desired under the proposed contract and may be supplemented or revised from time to time.

**2.2.3** The Agency shall reserve the right to, prior to award, revise, change, alter or amend any of the instructions, terms, conditions, and/or specifications identified within the RFP documents issued, within any attachment or drawing, or within any addenda issued; such notice shall be delivered in writing to each prospective and/or actual proposer. Such changes that are issued before the deadline for receipt of proposals shall be binding upon all prospective proposers. Such changes that are issued after the receipt of proposals, but prior to award shall be binding upon all parties that have submitted proposals; however, such parties shall be allowed to reject such changes by, within 5 days of receipt of such written notice, withdrawing his/her proposal. Such withdrawal must be delivered, in writing, to the CO within the 5-day deadline period.

**2.3 Proposal Preparation, Submission, and Receipt by the Agency.**

**2.3.1 Required Forms.** All required forms furnished by the Agency as a part of the RFP document issued shall, as instructed, be fully completed and submitted by the proposer. Such forms may be completed in a legible hand-written fashion, by use of a typewriter, or may be downloaded and completed on a computer. If, during the download, a form becomes changed in any fashion, the proposer must “edit” the form back to its original form (for example, signature lines must appear on the page the line was originally intended to be on).

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- 2.3.2 Manner of Submission.** The proposal submittal shall be submitted in the manner detailed within the RFP document. Failure to submit the proposal in the manner specified may result in a premature opening of, post-opening of, or failure to open and consider that proposal, and may, at the discretion of the CO, eliminate that proposer from consideration for award.
- 2.3.3 Time for Receiving Proposals.** Proposals received prior to the time set as the deadline for the receipt by the Agency of the proposal submittal shall be securely kept, unopened, by the Agency. The CO, whose duty it is to open such proposals, will decide when the specified time has arrived. No proposal received after the designated deadline shall be considered, except as detailed within Section No. 6 of form HUD-5369-B (8/93), *Late Submissions, Modifications and Withdrawal of Offers*.
- 2.3.3.1** Proposers are cautioned that any proposal submittal that may be time-stamped as being received by the Agency after the exact time set as the deadline for the receiving of proposals shall be returned unopened to the proposer. Any such proposals inadvertently opened shall not be considered, but shall be ruled to be invalid. No responsibility will attach to the Agency or any official or employee thereof, for the pre-opening of, or the failure to open a proposal not properly addressed and identified.
- 2.3.4 No Public Opening of Proposals.** Pursuant to the competitive proposals or RFP process, proposals are not publicly opened, but are held secure until the submittal deadline has passed. The proposals are then opened in private by the CO (or his/her designee) and are, pursuant to the evaluation plan, examined for minimal responsiveness (i.e. minimum compliance with the requirements of the RFP). Persons other than Agency staff involved in this process are not allowed to be present during the opening, nor may they inspect the proposals until after award has been completed.
- 2.3.5 Withdrawal of Proposals.** Proposals may be withdrawn as detailed within Section 6(h) of form HUD-5369-B (8/93), *Late Submissions, Modifications and Withdrawal of Offers*. Negligence on the part of the proposer in preparing his/her proposal confers no right of withdrawal or modification of his/her proposal after such proposal has been received and opened.
- 2.3.6 Conflicting Conditions.** Any provisions detailed within any of the RFP documents which may be in conflict or inconsistent with any of the paragraphs in any of the other RFP documents, including attachments, shall be void to the extent of any such conflict or inconsistency. Further, as stated within the preceding Section 1.1.1 of this SIPC, unless otherwise specified within the RFP or contract documents, in the event that any provision in any document listed herein conflicts with any provision within this SIPC, the provision in the RFP or contract document shall govern.

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**2.3.7 Interpretations.** No official oral interpretation can be made to any proposer as to the meaning of any instruction, condition, specifications drawing (if any), or any other document issued pertaining to this RFP. Every request for an official interpretation shall be made by the prospective proposer, in writing, pursuant to the schedule set within the RFP document issued and as directed by the Agency. Official interpretations will be issued in the form of addenda, which will be delivered to each proposer; but it shall be the prospective proposer's responsibility to make inquiry as to addenda issued. All such addenda shall become a part of the RFP documents and the proposed contract with the successful proposer, and all proposers shall be bound by such addenda, whether or not received by the prospective or successful proposer(s).

**2.4 Exceptions to Specifications.**

**2.4.1** A proposer may take exception to any of the proposal documents or any part of the information contained therein, by submitting, in writing to the CO, at least 10 days prior to the proposal deadline, a complete and specific explanation as to what he/she is taking exception to. Proposed alternate documents or information must also be included. A response by the Agency will be issued in writing within 5 days of receipt of such exception request. The Agency reserves the right to agree with the prospective proposer and issue a revision to the applicable RFP requirements, or may reject the prospective proposer's request.

**2.4.2** When taking exception, prospective proposers must propose services that meet the requirements of the RFP documents. Exceptions to the specification and/or approved "equal" requests may be discussed at the scheduled pre-proposal conference (if scheduled). All verbal instructions issued by the Agency officers not already listed within the RFP documents shall only become official when issued as addenda or as a written answer issued pursuant to receipt of a written question.

**2.5 Lump Sum Cost Breakdown (LSCB).**

**2.5.1** The Agency reserves the right to, at any time, request and receive from any or all proposers a LSCB of any or all the costs proposed during negotiations. The proposal documents constitute an outline of the work to be completed by the proposer. These documents are intended to include all major items, and the lump sum cost breakdown computed therefrom will be the maximum compensation for all work and materials whatsoever furnished by the proposer in order to comply with the proposal documents in their present form, whether or not indicated in the approximate quantities or pertaining to the items of work as listed.

**2.5.1.1** The purpose of this LSCB will serve the Agency in two distinct areas:

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- 2.5.1.1.1 Prior to award of Proposals.** The Agency may request a LSCB for any or all items reflected within the RFP document as “lump sum” for the purpose of determining an unbalanced cost proposal. The CO, using acceptable methods dictated by the industry, shall conduct the analysis.
- 2.5.1.1.2 After Award.** The Agency may request a LSCB for any or all items reflected within the RFP document as “lump sum” for the purpose of making partial payments to the successful proposer.
- 2.5.1.1.3 Increase/Decrease.** Under no circumstances, may any cost item reflected as “lump sum” be increased and/or decreased as a result of the LSCB analysis.

### **3.0 PROPOSAL EVALUATION.**

- 3.1 Proposal Opening Results.** It is understood by all proposers/prospective proposers that the proposals received are not publicly opened and the results will typically not be a matter of public record until the Agency has concluded all evaluations, has chosen a final top-rated proposer, has completed the award and is ready to issue such results. When the Agency issues such notice, the Agency will inform all proposers as to each proposer’s placement as a result of the evaluation (i.e. 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, etc.) and the total points each proposer was awarded as a result of the evaluation.
  - 3.1.1** All proposal documents submitted by the proposers are not necessarily a matter of public record and as a matter of normal course, the proposals submitted by each proposer will not, until after award has been completed, be available to be viewed by any interested parties except as approved by the Agency Legal Counsel (i.e. a proposer will not, prior to completion of award, be allowed to challenge an apparent top-rated proposer by inspecting the proposal that the apparent top-rated proposer submitted). The Agency shall, however, upon request, verify that the proposal documents submitted are/were acceptable.
- 3.2 Award of Proposal(s).** The successful proposer shall be determined by the top-rated responsive and responsible proposer as determined by the evaluation process detailed within the RFP document issued, provided his/her proposal is reasonable, he/she is able to deliver the specified items in a timely manner and it is, in the opinion of the Agency, to the best interests of the Agency to accept the proposal. All proposers will be notified in a timely manner of the results of the evaluation after award has been completed.

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**3.3 Rejection of Proposals.**

**3.3.1** The Agency reserves the right, at any time during the proposal process, to reject any or all proposals received. In the case of rejection of all proposals, the Agency reserves the right to advertise for new proposals or to proceed to do the work otherwise, if in the judgment of the Agency, the best interest of the Agency will be promoted.

**3.3.2** Prospective proposers acknowledge by downloading and receiving the RFP documents and/or by submitting a proposal that the submission of a proposal to the Agency is not a right by which to be awarded that proposal, but merely an offer by the prospective proposer to perform the requirements of the RFP documents in the event the Agency decides to consider an award to that proposer.

**3.4 Cancellation of Award.** The Agency reserves the right to, without any liability, cancel the award of any proposal(s) at any time before the execution of the contract documents by all parties.

**3.5 Mistake in Proposal Submitted.**

**3.5.1** A request for withdrawal of a proposal due to a purported error need not be considered by the Agency unless the same is filed in writing by the proposer within 48 hours after the proposal deadline (proposers may of their own volition withdraw a proposal prior to the submittal deadline). Any such request shall contain a full explanation of any purported error and shall, if requested by the Agency, be supported by the original calculations on which the proposal was computed, together with a certification and notarization thereon that such computation is the original and prepared by the proposer or his/her agent, who must be identified on the notarized form. The foregoing shall not be construed that such withdrawal will be permitted, as the Agency retains the right to accept or reject any proposal withdrawal for a mistake.

**3.5.2** Unless otherwise prohibited within the RFP documents, a mistake in the cost unit pricing that does not affect the total cost sum submitted may, at the Agency's discretion, be corrected by submitting a corrected cost form, together with a complete explanation in writing, of how the mistake occurred, to the CO, for his/her review. This mistake must be corrected before the issuance of contract documents.

**3.6 Irregular Proposal Submittal.** A proposal shall be considered irregular for any one of the following reasons, any one or more of which may, at the Agency's discretion, be cause for rejection:

**3.6.1** If the forms furnished by the Agency are not used or are altered or if the proposed costs are not submitted as required and where provided (especially within the eProcurement Marketplace).

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- 3.6.2** If all requested completed attachments do not accompany the proposal submitted.
- 3.6.3** If there are unauthorized additions, conditional or alternate proposals, or irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning or give the proposer submitting the same a competitive advantage over other proposers.
- 3.6.4** If the proposer adds any provisions reserving the right to accept or reject any award or to enter into a contract pursuant to an award.
- 3.7 Disqualification of Proposers.** Any one or more of the following shall be considered as sufficient for the disqualification of a proposer and the rejection of his/her proposal:

  - 3.7.1** Evidence of collusion among prospective proposers. Participants in such collusion will receive no recognition as proposers for any future work of the Agency until such participant shall have been reinstated as a qualified proposer. The names of all participants in such collusion shall be reported to HUD and any other inquiring governmental agency.
  - 3.7.2** More than one proposal for the same work from an individual, firm, or corporation under the same or different name(s), unless such was specifically allowed by the Agency within the proposal documents issued, including by addendum.
  - 3.7.3** Lack of competency, lack of experience and/or lack of adequate machinery, plant, and/or other resources.
  - 3.7.4** Documented unsatisfactory performance record as shown by past work for the Agency or with any other local, State or Federal agency, judged from the standpoint of workmanship and progress.
  - 3.7.5** Incomplete work, which in the judgment of the Agency, might hinder or prevent prompt completion of additional work, if awarded.
  - 3.7.6** Failure to pay or satisfactorily settle all bills due on former contracts still outstanding at the time of letting.
  - 3.7.7** Failure to comply with any qualification requirement of the Agency.
  - 3.7.8** Failure to list, if required, all subcontractors (if subcontractors are allowed by the Agency) who will be employed by the successful proposer(s) to complete the work of the proposed contract.

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**3.7.9** As required by the RFP documents, failure of the successful proposer to be properly licensed by the State of Nebraska and/or to be insured by a general liability and/or worker's compensation policy.

**3.7.10** Any legal reason to be determined, in good faith, to be in the best interests of the Agency.

**3.8 Burden of Proof.** If requested by the Agency, it shall be the responsibility of the proposer(s) to furnish the Agency with sufficient data or physical samples, within a specified time, so that the Agency may determine if the goods or services offered conform to the Specifications.

**4.0 Right to Protest.**

**4.1 Rights.** Any prospective or actual proposer, offeror, or Contractor who is allegedly aggrieved in connection with the solicitation of a proposal or award of a contract, shall have the right to protest. An alleged aggrieved protestant claiming this right is hereby informed that these regulations do not provide for administrative appeal as a matter of right for that alleged aggrieved protestant.

**4.1.1** An alleged aggrieved "protestant" is a prospective or actual proposer who feels that he/she has been treated inequitably by the Agency and wishes the Agency to correct the alleged inequitable condition or situation. To be eligible to file a protest with the Agency pertaining to an RFP or contract, the alleged aggrieved protestant must have been involved in the RFP process in some manner as a prospective proposer (i.e. registered and received the RFP documents) when the alleged situation occurred. The Agency has no obligation to consider a protest filed by any party that does not meet these criteria.

**4.2 Administrative Powers.** It is totally within the administrative powers of the CEO to grant or deny any requests for administrative appeal. If, in the opinion of the CEO, the alleged aggrieved protestant merits an administrative review, the CEO shall direct that alleged aggrieved protestant to submit additional data.

**4.3 Procedure to Protest.** An alleged aggrieved protestant shall comply with the following protest procedures, and failure to comply in the manner prescribed shall automatically relieve the Agency from accepting or considering that protest:

**4.3.1 Protest Document.** The alleged aggrieved protestant must file, in writing, to the CO the exact reason for the protest, attaching any supportive data. The protestant must state within the written protest document specifically (not by inference) what action by the Agency or condition is being protested as inequitable, making, where appropriate specific reference to the RFP documents issued. The protest document must also state the corrective action requested. Failure by the alleged aggrieved protestant to fully submit such information shall relieve the Agency from any responsibility to consider the protest and take any corrective action.

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- 4.3.2 Deadlines.** The written instrument containing the reason for the protest must be received by the CO within 10 days after the occurrence of any of the following:
- 4.3.2.1** The deadline for receiving proposals;
  - 4.3.2.2** Receipt of notification of the results of the evaluation or the award; or
  - 4.3.2.3** The alleged aggrieved protestant knows or should have known the facts.
- 4.3.3 Time Limit.** In any case, protests shall be filed no more than 10 days after any of the above (unless the occurrence being protested occurred in its entirety after the proposal deadline). Protests received after these dates shall not be considered.
- 4.3.4 CO Review/Issue Opinion.** The CO shall review the written protest and supportive data, if any. He/she shall, within 10 days after receipt of the written protest, issue a written opinion and decision. This document shall state the reasons for the action taken as well as inform the alleged aggrieved protestant of the right of further administrative review. A copy of this written opinion and decision shall be forwarded to the CEO.
- 4.3.5 Administrative Appeal.** If the alleged aggrieved protestant does not agree with the written opinion and decision issued by the CO, the alleged aggrieved protestant may, after receipt of the written opinion and decision issued by the CO request an administrative appeal hearing be granted (such request must be delivered in writing to the CO within 5 days of receipt of the written opinion and decision; failure to do so within such 5 days shall relieve the Agency of any responsibility to consider such request). The following procedures must be complied with in the manner prescribed; failure by the alleged aggrieved protestant to comply shall automatically relieve the Agency from accepting or acting on that request for administrative hearing:
- 4.3.5.1** The alleged aggrieved protestant must file, in writing, his/her request for an administrative hearing, to the CEO, within 5 days of receipt of the written opinion and decision and failure to do so within such 5 days shall relieve the Agency of any responsibility to consider such request.
  - 4.3.5.2** The request for an administrative appeal hearing must contain the specific reasons for the appeal and all supporting data for those reasons.

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4.3.5.3 It shall be within the administrative powers of the CEO to, after review of the request submitted, grant, or deny any request for administrative appeal.

4.3.5.4 If the CEO, after complete review of the alleged aggrieved protestant's written request and supporting data, decides that the request does not merit further consideration, he/she shall render his/her decision in writing to the alleged aggrieved protestant. A decision rendered under this paragraph shall be made within 10 days after the receipt of the alleged aggrieved protestant's request for an administrative hearing. This decision shall be final without further administrative recourse.

4.3.5.5 If the CEO, after review of the alleged aggrieved protestant's written request, decides that the request merits further consideration, he/she shall forward the protestant's written request, along with a cover letter explaining why it merits further consideration and with a recap of all proposals submitted and a copy of the original written protest, to the Agency Legal Counsel for consideration. The Agency Legal Counsel shall issue to the alleged aggrieved protestant a decision, in writing, within 10 days of his/her receipt of such documents.

4.3.5.6 Such written decision delivered to the alleged aggrieved protestant shall exhaust the Agency internal protest and administrative appeal process available to the alleged aggrieved protestant.

## **5.0 Disputed Billings (Charges).**

5.1 **Procedures.** In addition to the procedures detailed within Clause No. 7 of Contract Appendix No. 1, form HUD-5370-C (01/2014), *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, in the event that the Agency disputes any portion of its billing(s), the Agency shall pay the undisputed portion of such billing and initiate the dispute-resolving procedures, as follows:

5.1.1 The Agency's representative shall, within 10 days after the Agency's receipt of such billing, formally notify the Contractor's representative of all particulars pertaining to the dispute, and request that he/she investigate and respond to this issue.

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- 5.1.2 If such dispute cannot be resolved by the Contractor's response, within 10 days after such notification is given, the CO and the Contractor's representative shall meet to discuss the matter and attempt to arrive at a resolution.
- 5.1.3 If the CO and the Contractor's representative are unable to resolve the dispute through such discussion within 10 days, the Agency shall, within 10 days thereafter, either:
  - 5.1.3.1 Pay the disputed charges and reserve the right to submit the matter to the appropriate District Court in the State of Nebraska;
  - 5.1.3.2 Not pay the disputed charge and submit the matter to the appropriate district court in the State of Nebraska;
  - 5.1.3.3 Not pay the disputed charge and allow the Contractor to submit the matter either to the appropriate District Court in the State of Nebraska.
- 5.1.4 The decision from arbitration will be binding upon both parties. If the decision is averse to the Agency, the Agency shall pay the Agency's receipt of the decision. If the decision is in favor of the Agency, the Contractor will either:
  - 5.1.4.1 Clear the amount which is ordered from the Agency account; or
  - 5.1.4.2 Repay to the Agency the amount ordered.
  - 5.1.4.3 Either option shall be completed within 10 days after the Contractor's receipt of the arbitrator's decision.

**6.0 Additional Considerations.**

**6.1 Right of Joinder or Piggyback.**

- 6.1.1 Any political subdivision within the State of Nebraska (or any other State) may be granted the privilege of joining the awarded contract, only at the option of the successful proposer. If the successful proposer so grants such a privilege, the terms and conditions of the RFP documents, including the ensuing contract, may be passed on to the joining political subdivision by the successful proposer.
- 6.1.2 The successful proposer shall retain the unilateral right to allow or disallow any political subdivision the privilege of joining the awarded contract. In the event the successful proposer allows another political subdivision to join the Agency contract, it is expressly understood that the Agency shall in no way be liable for the joining political subdivision obligations to the successful proposer in any manner whatsoever.

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- 6.2 Non-Escalation.** Unless otherwise specified within the RFP documents, the unit prices reflected on the contract shall remain firm with no provision for price increases during the term of the contract.
- 6.3 Funding Restrictions and Order Quantities.** The Agency reserves the right to reduce or increase estimated or actual quantities in whatever amount necessary without prejudice or liability to the Agency, if:
- 6.3.1** Funding is not available;
  - 6.3.2** Legal restrictions are placed upon the expenditure of monies for this category of service or supplies; or,
  - 6.3.3** The Agency's requirements in good faith change after award of the contract.
- 6.4 Required Permits.** Unless otherwise stated in the RFP documents, all local, State or Federal permits which may be required to provide the services ensuing from award of this RFP, whether or not they are known to either the Agency or the proposers at the time of the proposal submittal deadline or the award, shall be the sole responsibility of the successful proposer and any costs submitted by the proposer shall reflect all costs required by the successful proposer to procure and provide such necessary permits.
- 6.5 Taxes.** All persons doing business with the Agency are hereby made aware that the Agency is exempt from paying Missouri State Sales and Use Taxes and Federal Excise Taxes. A letter of Tax Exemption will be provided upon request.
- 6.6 Government Standards.** It is the responsibility of the prospective proposer to ensure that all items and services proposed conform to all local, State and Federal laws concerning safety (OSHA and NIOSH) and environmental control (EPA and any County Pollution Regulations for the jurisdictions that the Agency has housing within) and any other enacted ordinance, code, law, or regulation. The successful proposer shall be responsible for all costs incurred for compliance with any such possible ordinance, code, law, or regulation. No time extensions shall be granted or financial consideration given to the successful proposer for time or monies lost due to violations of any such ordinance, code, law, or regulations that may occur.
- 6.7 Freight on Bill and Delivery.** All costs submitted by the successful proposer shall reflect the cost of delivering the proposed items and/or services to the location(s) specified within the RFP documents or within the contract.
- 6.7.1** The successful proposer agrees to deliver to the designated location(s) on or before the date as specified in the finalized contract. Failure to deliver on or before the specified date constitutes an event of default by the successful proposer. Upon default, the successful proposer agrees that the Agency may, at its option, rescind the finalized contract under the default clause herein and seek compensatory damages as provided by law.

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- 6.8 Communication.** If during the period of the contract, it is necessary that the Agency place toll or long-distance telephone calls or telegrams in connection therewith (for complaints, adjustments, shortages, failure to deliver, etc.), it is understood that the successful proposer will bear the charge or expense for all such calls and/or telegrams.
- 6.9 Work on Agency Property.** If the successful proposer's work under the contract involves operations by the successful proposer on Agency premises, the successful proposer shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work and, except to the extent that any such injury is caused solely and directly by the Agency's negligence, shall indemnify the Agency, and their officers, agents, servants and employees against all loss which may result in any way from any act or omission of the successful proposer, its agents, employees, or subcontractors.
- 6.10 Estimated Quantities.** Unless otherwise stated within the RFP documents, the quantities reflected within the RFP documents, to the best of the Agency's knowledge, reflect projected consumption data. These quantities are not meant to infer or imply actual consumption figures or quantities that will be purchased by the Agency under the finalized contract; but, pursuant to all RFP documents, these quantities will be used as calculation figures to determine the successful proposer.
- 6.11 Warranty.**
- 6.11.1** The services provided under the contract shall conform to all information contained within the RFP documents as well as applicable Industry Published Technical Specifications, and if one of the above-mentioned Specifications contains more stringent requirements than the other, the more stringent requirements shall apply.
- 6.11.1** The liability of the successful proposer to the Agency (except as to title) arising out of the furnishing of the services or of its use under the terms of the contract shall not exceed the correcting of the defect(s) in the services as provided under the contract, and upon expiration of the warranty period all such liability shall terminate except under the warranty for merchantability and the warranty of fitness for a particular purpose.
- 6.12 Official, Agent and Employees of the Agency not Personally Liable.** It is agreed by and between the parties hereto that in no event shall any official, officer, employee, or agent of the Agency in any way be personally liable or responsible for any covenant or agreement herein contained, whether either expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this agreement.

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- 6.13 Subcontractors.** Unless otherwise stated within the RFP documents, the successful proposer may not use any subcontractors to accomplish any portion of the services described within the RFP documents or the contract without the prior written permission of the CO.
- 6.14 Salaries and Expenses Relating to the Contractor's Employees.** Unless otherwise stated within the RFP documents, the successful proposer shall pay all salaries and expenses of, and all Federal, Social Security taxes, Federal and State Unemployment taxes, and any similar taxes relating to its employees used in the performance of the contract. The successful proposer further agrees to comply with all Federal, State and local wage and hour laws and all licensing laws applicable to its employees or other personnel furnished under this agreement.
- 6.15 Attorney's Fees.** In the event that litigation is commenced by one party hereto against the other in connection with the enforcement of any provision of this agreement, the prevailing party shall be paid by the losing party all court costs and other expenses of such litigation, including attorneys' fees, in a reasonable amount, to be determined by the court. The amount so allowed as attorneys' fees shall be taxed to the losing party as costs of the suit, unless prohibited by law.
- 6.16 Independent Contractor.** Unless otherwise stated within the RFP documents or the contract, the successful proposer is an independent Contractor. Nothing herein shall create any association, agency, partnership, or joint venture between the parties hereto and neither shall have any authority to bind the other in any way.
- 6.17 Severability.** If any provision of this agreement or any portion or provision hereof applicable to any particular situation or circumstance is held valid, the remainder of this agreement or the remainder of such provision (as the case may be), and the application thereof to other situations or circumstances shall not be affected thereby.
- 6.18 Waiver of Breach.** A waiver of either party of any terms or condition of this agreement in any instance shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, obligation or agreement of either party.
- 6.19 Time of the Essence.** Time is of the essence under this agreement as to each provision in which time of performance is a factor.
- 6.20 Limitation of Liability.** In no event shall the Agency be liable to the successful proposer for any indirect, incidental, consequential, or exemplary damages.

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**6.21 Indemnity.**

- 6.21.1** The successful proposer shall protect, indemnify and hold the Agency, its officers, employees, agents, consulting engineers and other retained consultants harmless from and against any and all claims, damages, losses, suits, actions, decrees, judgments, attorney's fees, court costs and other expenses of any kind or character which the Agency, its officers, employees, agents, consulting engineers or other retained consultants may suffer, or which may be sought against, recovered from or obtainable against the Agency, its officers, employees, agents, consulting engineers or other retained consultants such as:
- 6.21.1.1** As a result of, or by reason of, or arising out of, or on account of, or in consequence of any act or failure to act on the part of the successful proposer, its subcontractors or agents, or anyone directly or indirectly employed by any subcontractor or agent, in the fulfillment or performance of the terms, conditions or covenants that are contained in this contract or agreement, regardless of whether or not the occurrence which gave rise to such claim, damage, loss, suit, action, judgment or expense was caused, in part, by any party indemnified hereunder; or
  - 6.21.1.2** As a result of, or by reason of, or arising out of, or on account of, or in consequence of, any neglect in safeguarding the work; or
  - 6.21.1.3** Through the use of unacceptable materials or products, or both, which may be defective or manufactured, designed, or installed so as to give rise to a claim; or
  - 6.21.1.4** Because of any claim or amount recovered under any law, ordinance, or decree, which claim or recovery arose out of or is attributable to any act or failure to act on the part of the successful proposer in the fulfillment or performance of the terms, conditions and covenants that are contained in this contract. Any money due by the successful proposer under and by virtue of this contract which is considered necessary by the Agency for such purpose, may be retained by the Agency for its protection; or in case no money is due, its surety may be held until all such claims, damages, losses, suits, actions, decrees, judgments, attorney's fees and court costs and other expenses of any kind or character as aforesaid shall have been settled and suitable evidence to that effect furnished to the Agency provided, however, that money due the successful proposer will not be withheld when the successful proposer produces satisfactory evidence that it is adequately protected by public liability and property damage insurance, if required.

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- 6.21.2** In this connection, it is expressly agreed that the successful proposer shall, at its own expense, defend the Agency, its officers, employees, agents, consulting engineers and other retained consultants, against any and all claims, suits or actions which may be brought against them, or any of them, as a result of, or by reason of, or arising out of, or on account of, or in consequence of any act or failure to act the consequences of which the successful proposer has indemnified the Agency, its officers, employees, agents, consulting engineers and other retained consultants against, and if the successful proposer shall fail to do so, the Agency shall have the right, but not the obligation, to defend the same and to charge all direct and incidental costs of such defense to the successful proposer including attorney's fees and court costs; provided, however, that if the forum in which such claim suit or action is heard determines that the occurrence that gave rise to the same was caused, in whole or in part, by any party who is indemnified hereunder, the Agency shall reimburse the successful proposer for all, or the indemnified party's proportionate share, as the case may be, of the costs of such defense.
- 6.21.2** Reimbursement to the successful proposer by the Agency, in whole or in part, for the costs of protecting traffic shall not serve to relieve the successful proposer of its responsibility as set forth in the RFP documents.
- 6.21.3** The successful proposer guarantees the payment of all just claims for materials, supplies and labor, and all other just claims against it or any subcontractor, in connection with the contract.
- 6.22 Lobbying Certification.** By proposing to do business with the Agency or by doing business with the Agency, each proposer certifies the following:
- 6.22.1** No Federal appropriated funds have been paid or will be paid, by or on behalf of the proposer, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
- 6.22.2** If any funds other than 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 in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

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- 6.22.3 The successful proposer shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
- 6.22.4 This clause is a material representation of fact upon which reliance was placed when the award was made or entered into. The signing of a contract or acceptance of award certifies compliance with this certification, which is a prerequisite for making or entering into a contract, which is imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certifications shall be subject to civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.
- 6.23 **2 CFR §200.326, Appendix II, *Contract Provisions for Non-Federal Entity Contracts Under Federal Awards*.** Pursuant to this CFR, as issued by the Office of the U.S. Secretary of HUD, the Agency, and the Contractor each agree to comply with the following provisions and agree that any contract that ensues as a result of this RFP will include the following clauses, whether inserted or by reference:
- 6.23.1 **Remedies for Contractor Breach.** Pertaining to contract-related issues, it is the responsibility of both the Agency and the Contractor to communicate with each other in as clear and complete a manner as possible. If at any time during the term of this contract the Agency or the Contractor is not satisfied with any issue, it is the responsibility of that party to deliver to the other party communication, in writing, fully detailing the issue and corrective action (please note that the Agency has the right to issue unilateral addendums to this contract, but the Contractor does not have the same right). The other party shall, within 10 days, respond in writing to the other party (however, the Agency shall retain the right to, if conditions warrant, require the Contractor to respond in a shorter period of time). Further, the Agency shall, at a minimum, employ the following steps in dealing with the Contractor as to any performance issues:
- 6.23.1.1 If the Contractor is in material breach of the contract, the Agency may promptly invoke the termination clause detailed within Section No. 3 of Contract Appendix No. 1, form HUD-5370-C (01/2014), *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, which form is attached hereto, and terminate the contract for cause. Such termination must be delivered to the Contractor in writing and shall fully detail all pertinent issues pertaining to the cause of and justification for the termination.

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- 6.23.1.2** Prior to termination, the Agency may choose to warn the Contractor, verbally or in writing, of any issue of non-compliant or unsatisfactory performance. Such written warning may include placing the Contractor on probation, thereby giving the Contractor a certain period of time to correct the deficiencies or potentially suffer termination. The Agency shall maintain in the contract file a written record of any such warning detailing all pertinent information. If the Contractor does not agree with such action, the Contractor shall have 10 days to dispute or protest, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with the Agency's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the Agency's alleged incorrect action(s).
- 6.23.1.3** After termination, if the Contractor does not agree with the Agency's justification for the termination, the Contractor shall have 10 days to dispute, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with the Agency's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the Agency's alleged incorrect action(s).
- 6.23.1.4** The response to any protest received shall be conducted in accordance with Section No. 4.0 of this document.
- 6.23.2** **Termination for Cause and Convenience.** For all contracts in excess of \$10,000, as detailed within Clause No. 3 of Contract Appendix No. 1, form HUD-5370-C (01/2014), *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, attached hereto.
- 6.23.3** **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

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- 6.23.4 Davis-Bacon Act, as amended (40 U.S.C.3141-3148).** When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C.3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors [are] required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors [are] required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the **Copeland “Anti-Kickback” Act (40 U.S.C. 3145)**, as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- 6.23.5 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or *contracts for transportation or transmission of intelligence.*

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- 6.23.7 Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- 6.23.8 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—**Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C.1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 6.23.9** Mandatory standards and policies relating to **energy efficiency** which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- 6.23.10 Debarment and Suspension (Executive Orders 12549 and 12689)—**A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 6.23.11 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—**Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

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- 6.23.12 §200.322 Procurement of recovered materials.** A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only 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, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 6.24 Additional Federally Required Orders/Directives.** Both parties agree that they will comply with the following laws and directives that the Agency has received from HUD and that these same clauses will be a part of any contract that ensues as a result of this RFP:
- 6.24.1 Executive Order 11061**, as amended, which directs the Secretary of HUD to take all action which is necessary and appropriate to prevent discrimination by agencies that utilize federal funds.
- 6.24.2 Public Law 88-352, Title VI of the Civil Rights Act of 1964**, which provides that no person in the United States shall, on the basis of race, color, national origin, or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives federal financial assistance. The Agency hereby extends this requirement to the Contractor and its private contractors. Specific prohibited discriminatory actions and corrective action are described in Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 19901 et. seq.).
- 6.24.3 Public Law 90-284, Title VIII of the Civil Rights Act of 1968.**, popularly known as the Fair Housing Act, which provides for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person because of race, color, religion, sex, or national origin. Pursuant to this statute, the Agency requires that the Contractor administer all programs and activities, which are related to housing and community development in such a manner as affirmatively to further fair housing.
- 6.24.4 The Age Discrimination Act of 1975**, which prohibits discrimination on the basis of age.

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- 6.24.5 Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.).
- 6.24.6 HUD Information Bulletin 909-23 which is the following:
  - 6.24.6.1 Notice of Assistance Regarding Patent and Copyright Infringement;
  - 6.24.6.2 Clean Air and Water Certification; and
  - 6.24.6.3 Energy Policy and Conversation Act.
- 6.24.7 The mentioned herein of any statute or Executive Order is not intended as an indication that such statute or Executive Order is necessarily applicable not is the failure to mention any statute or Executive Order intended as an indication that such statute or Executive Order is not applicable. In this connection, therefore each provision of law and each clause, which is required by law to be inserted in this agreement, shall be deemed to have been inserted herein, and this agreement shall be read and enforced as though such provision or clause had been physically inserted herein. If, through mistake or otherwise, any such provision is not inserted or is inserted incorrectly, this agreement shall forthwith be physically amended to make such insertion or correction upon the application of either party.