



RFP: RAD 17-R-0021  
DEVELOPER SERVICES II

# The Housing Authority of the City of El Paso, Texas

## Requests Proposals for:

### DEVELOPER SERVICES II

### Solicitation No. RAD 17-R-0021

<p>Housing Authority of the City of El Paso, Texas</p> <p>Gerald Cichon Chief Executive Officer</p>	<p>An Equal Opportunity Employer and Contracting Agency</p>
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RFP: RAD 17-R-0021

DEVELOPER SERVICES II

## REQUEST FOR PROPOSAL (RFP)

### RAD 17-R-0021

The Housing Authority of the City of El Paso, Texas (HACEP) is requesting proposals for:

### Developer Services II

Request for Proposal packets will be available **April 25, 2017** beginning at **2:00 PM** local time. **Refer to Request for Proposal No. RAD 17-R-0021.** This solicitation is only available electronically. To view the solicitation, please visit [www.hacep.org/procurement.sstg](http://www.hacep.org/procurement.sstg), and click on the “E-Procurement” link. You will have the opportunity to register and view the solicitation. There is no fee associated with the use of this system.

**A pre-proposal conference will be held on May 3, 2017 @ 2 pm at 5300 E. Paisano Dr.** Any questions regarding the RFP may be directed to Lourdes Gomez, at (915) 849-3785 [lgomez@hacep.org](mailto:lgomez@hacep.org). If you would like to join in the tele-conference, call (877) 226-9790, access code 9217791.

**The closing date and time for receipt of sealed proposals is May 19, 2017 2:00 P.M. local time.** All submittals shall be submitted in “Sealed Envelopes” and delivered or hand carried to: Housing Authority of the City of El Paso, Texas, Attn: Lourdes Gomez Contract Specialist, 5300 E. Paisano Dr., El Paso, Texas, 79905.

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Juan Pulido

Procurement Manager

### Advertisement

**El Paso Times: Sunday: April 23, 2017**

**Sunday: April 30, 2017**



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## Executive Summary Notice Request for Proposal (RFP)

**Solicitation No.: RAD 17-R-0021**

1. The purpose of this Executive Notice is to highlight the key requirements of the Request for Proposal (RFP).
2. The Housing Authority of the City of El Paso, Texas is requesting proposals from qualified firms to provide DEVELOPER SERVICES II. HACEP reserves the right to award multiple contracts.
3. The Housing Authority of the City of El Paso, Texas contemplates award of a contract to provide DEVELOPER SERVICES II. Offers in response to this solicitation will be evaluated using the Technical Proposal Evaluation Process. Offers must be submitted in accordance with the instructions provided in the Request for Proposal. Failure to furnish a complete offer at the time and date specified in the solicitation may result in elimination from consideration. Term of this contract is for ONE (1) year base with four (4) one-year renewal options.
4. Formal communications such as requests for clarifications and/or information concerning this solicitation shall be submitted in writing no later than **May 8, 2017, at 5:00 p.m.** local time and directed to **Lourdes Gomez** Contract Specialist, at [lgomez@hacep.org](mailto:lgomez@hacep.org).
5. **Any form of contact by an offeror or potential offeror regarding this RFP, at any time during the solicitation process from initial advertisement through award, with Commissioners of the Housing Authority of the City of El Paso, Texas (HACEP) or any person employed by HACEP, other than through the communication channels stipulated in the Request for Proposal, or as subsequently instructed by HACEP through the solicitation process, will constitute grounds for rejection of their Proposal.**
6. Since HACEP is interested in limiting costs associated with the acquisition process, offerors not intending to continue with the RFP are requested to submit a letter requesting they be taken off the mailing list for this solicitation. HACEP reserves the right to reject any or all proposals.
7. **Offerors will submit one (1) unbound master copy (so marked), three (3) copies and one Digital copy (CD or usb) of their proposal to 5300 E. Paisano.**
8. **This solicitation and subsequent amendments shall supersede any posting made through the NAHRO e-procurement system. Potential offerors are advised to review the dates contained in this solicitation in the event of a discrepancy between dates listed in this solicitation and dates listed on the NAHRO e-procurement system.**
9. Thank you for your interest in this project. We look forward to receiving your proposal.

Gerald Cichon



# Housing Authority of the City of El Paso

RFP: RAD 17-R-0021

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**Date Issued:** April 25, 2017  
**Subject:** Request for Proposal (RFP)

**Solicitation No.:** RAD 17-R-0021

Separate sealed proposals for DEVELOPER SERVICES II for the Housing Authority of the City of El Paso, Texas will be received at the following address:

**Contract Compliance & Procurement Administration  
Housing Authority of the City of El Paso, Texas  
5300 Paisano  
El Paso, Texas 79905 - 2931**

until 2:00 p.m., local time, May 19, 2017. Proposals will be held in confidence and not released in any manner until after contract award.

**For any Contract which requires the Contractor to provide services, the Contractor shall, prior to commencement of work, provide HACEP with Certificates of Insurance in the below amounts and shall maintain such coverage in effect for the full duration of the Contract. HACEP must be named as additional insured in the insurance certificate(s).**

- Professional liability insurance in the amount of \$1,000,000 per occurrence for the Respondent and any other professionals used by the Respondent, with respect to negligent acts, errors or omissions in connection with professional services to be provided in connection with the development project. HACEP must be added as an “additional insured”.
- Workers' compensation insurance and employer's liability insurance in the maximum statutory liability amount equal to \$1,000,000 per occurrence, naming HACEP and its affiliate non-profit as additional insured.
- Business automobile liability insurance in the amount equal to \$1,000,000 per occurrence.
- Developer must also meet the insurance requirements of the debt & Equity Providers.

By submission of a proposal, the offeror agrees, if its proposal is accepted, to enter into a contract with HACEP in the form included in the solicitation documents, to complete all work as specified or indicated in the contract documents for the contract price and within the time parameters indicated in the attached RFP. The offeror further accepts all of the terms and conditions of the Request for Proposal.

All proposals will be evaluated on eligibility criteria and factors for award stated in this proposal.

The Housing Authority of the City of El Paso, Texas specifically reserves the right to reject any or all proposals, waive technicalities and to award the contract in the best interest of the Housing Authority. Price alone will not be the sole determining criteria in the selection process.

**All proposals should be delivered to 5300 E. Paisano must be received by Procurement Staff. Receptionist staff cannot accept your proposal and is not responsible for mishandling your proposal.**

**Each offeror is responsible to ensure that they have received all amendments related to this solicitation. Contract Compliance will send amendments through e-procurement, through fax, etc. For those companies that download this solicitation through e-procurement, amendments will be posted to e-procurement. Companies that receive this solicitation in electronic format through other than e-procurement may not receive notifications.**

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**PART II – CONTRACT CLAUSES**

<b>Section D</b>	<b>Clauses Incorporated by Reference Mandatory Clauses and Conditions General Contract Conditions</b>
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**PART III – DOCUMENTS, EXHIBITS AND OTHER ATTACHEMENTS**

<b>Section E</b>	<b>Attachments*:</b>  <i>Form of Non-collusive Affidavit,</i>  <i>Certification of Equal Employment Agreement Federal Labor Standards Certification Statement of Offeror’s Qualifications</i>  <i>Certification Regarding Debarment and Suspension Disclosure of Lobbying Activities</i>
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Exhibits

<b>A</b>	Project Description
<b>B</b>	Comparable Projects Experience
<b>C</b>	Use of Disadvantaged Business Enterprises (DBEs), Minority Business Enterprises (MBEs), and Women’s Business Enterprises (WBEs)
<b>D</b>	MOU A Memorandun of Understanding LEGAL Description
	MOU B Memorandun of Understanding LIHTC Commitment
	MOU C Memorandum of Understanding Predevelopment Budger
	MOU D Memorandun of Understanding Davis Bacon Wage Rates
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**Section G**

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**Solicitation Provisions Incorporated by Reference**

**Section H**

**Evaluation Criteria**

**Section I**

**Travel Reimbursement Guidelines**

**Section J**

**Vendor Information Form**

\*All documents listed as attachments must be submitted in order for your offer to be considered responsive, as well as HUD Form 5369-C (Certifications and Representations of Offerors), found in Section F

\*\*Executed after award



# Housing Authority of the City of El Paso

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## SECTION A Solicitation, Offer and Award

1. Contract No. \_\_\_\_\_
2. Solicitation No. RAD 17-R-0021
3. Type of Solicitation
- Sealed Bid (IFB)
- Negotiated (RFP)
4. Date issued : April 25, 2017
5. Issued By: **HACEP**  
**Procurement Administration Department**
6. Address: **5300 E. Paisano Dr.**  
**El Paso, Texas 79905 – 2931**

### SOLICITATION

7.

**NOTE:** All offers are subject to all applicable terms and conditions contained in this solicitation.

8. For information call: **Lourdes Gomez,** Telephone No.: **(915) 849-3785**

Technical questions may be emailed to [lgomez@hacep.org](mailto:lgomez@hacep.org) no later than May 8, 2017 @ 2pm local time.

(X)	SEC.	DESCRIPTION	PAGES	(X)	SEC.	DESCRIPTION	PAGES
PART I – THE SCHEDULE				PART – II CONTRACT CLAUSES			
X	A	Solicitation Offer & Award	1 of 2	X	D	Incorporated by Reference General Contract Conditions Section 3 Clause	1 of 1 1 of 5 1 of 2
X	B	Price Schedule	N/A	PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS			
X	C	Scope of Work		X	E	<b>List of Attachments –</b> Non-collusive Affidavit Certificate of Equal Employment Federal Labor Standards Certification Statement of Offeror’s Qualifications Form of Contract Debarment Certification Disclosure of Lobbying Activities	1 of 1 1 of 1 1 of 1 1 of 4 1 of 2 1 of 2 1 of 2
				PART IV – REPRESENTATIONS AND INSTRUCTIONS			
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# Housing Authority of the City of El Paso

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		Contract Administration Data		<b>X</b>	<b>G</b>	Instructions, Conditions to Offerors  Solicitation Provisions Incorporated by Reference	<b>1 of 2</b>  <b>1 of 3</b>
		Special Contract Requirements		<b>X</b>	<b>H</b>	Evaluation Criteria	<b>1 of 4</b>

In accordance with above, the undersigned agrees, if this offer is accepted within ninety (90) calendar days from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered.





# Housing Authority of the City of El Paso

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### SOLICITATION OFFER AND AWARD

(Must be completed by Offeror)

**Offeror acknowledges receipt of amendment(s)**

Number(s)	Date(s)
11. <b>Name and Address of Offeror:</b>	12. <b>Name and Title of Person Authorized to Sign Offer (TYPE OR PRINT)</b>
13. <b>Telephone No. (include area code)</b>	14. <input type="checkbox"/> <b>Check if remittance address is different from Above – Enter such address in</b>  Federal ID No. _____
15. <b>Signature:</b> _____	<b>Offer Date:</b> _____

### AWARD (To be completed by Authority)

16. <b>Accepted as to items numbered:</b>	17. <b>Amount:</b>
18. <b>Submit invoices to:</b> Accounting and Finance Department <a href="mailto:accountspayable@hacep.org">accountspayable@hacep.org</a> Attn: Accounts Payable HACEP 5300 E. Paisano Dr. El Paso, Texas 79905 – 2931	19. <b>Technical Representative</b> <b>Name:</b> _____ <b>Telephone No.</b> _____
20. <b>Administered by:</b> Procurement and Contract Compliance Department HACEP 5300 E. Paisano Dr. El Paso, Texas 79905 – 2931 (915) 849-3776	21. <b>Payment will be made by:</b> Accounts Payable Department HACEP 5300 E. Paisano Dr. El Paso, Texas 79905 – 2931 (915) 849-3742
22. <b>Name of Contracting Officer (Type or Print)</b>  <u>Gerald Cichon, Chief Executive Officer</u>	23. <b>Signature of Contracting Officer:</b>  _____
<b>Award Date:</b>	<b>IMPORTANT:</b> Award will be made by formation of contract. Award notice will be generated by NAHRO e-procurement or similar manner.



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**PART I**

**THE SCHEDULE**



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**SECTION B**

**PRICE SCHEDULE**



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**SECTION C**

**SCOPE OF SERVICES**



**INTRODUCTION:**

The Housing Authority of the City of El Paso (HACEP) requests proposals from qualified firms or individuals interested in serving as a third party developer (“Developer” or “Developers”) to HACEP in the design, financing and new construction of two affordable housing communities, using 9% low income housing tax credits (LIHTC) anticipated to be allocated by TDHCA to HACEP in summer 2017, for Pellicano Place and Medano Heights. Award of this solicitation by HACEP is contingent on HACEP’s successful award of TDHCA 9% LIHTC.

**BACKGROUND INFORMATION:**

HACEP is a public housing authority created pursuant to Texas Statutes, with a goal of providing additional housing opportunities to low and low to moderate-income residents of El Paso, TX. HACEP has both public housing capacity and administers the Section 8 Housing Choice Voucher Program sponsored by the United States Department of Housing and Urban Development (HUD). To further its mission of housing El Paso families, HACEP will revitalize selected communities through public/private partnerships with one or more qualified developers.

**HACEP AND THE RENTAL ASSISTANCE DEMONSTRATION (RAD) PROJECT:**

HACEP is participating in a program offered by HUD - the Rental Assistance Demonstration (RAD) program. RAD allows HACEP to leverage private financing for public housing communities through an ownership entity of which HACEP is a member. HACEP uses standard financing, primarily low income housing tax credits and traditional debt financing, to rehabilitate and replace public housing through the RAD program.

Upon completion, properties are converted from Public Housing to a Project Based Rental Assistance property with a standard 20 Year Housing Assistance Payments contract. HUD established RAD rents will be required instead of standard local Fair Market Rents (FMRs).

Utilizing the RAD program, HACEP is renovating or rebuilding substantially all of its portfolio of about 6,300 public housing units in a program that started in 2015 and is expected to be substantially completed at the end of 2018. Approximately 1,600 units have been converted to date.

All projects are within the city limits of El Paso, TX. The portfolio includes primarily low-rise garden-style communities, as well as four high-rise buildings and single-family homes in scattered communities.

HACEP will consider utilizing multiple debt and equity instruments to fund the RAD conversion program, including tax-exempt bonds, low income housing tax credits, mortgage financing, limited partnerships, HOME funds, CDBG, Federal Home Loan Bank funds, PACE loans and public/private collaborations to support projects. HACEP, at its discretion, may use proprietary funds for credit enhancements, development loans, or other purposes in project financing. A major role of the selected developer will be to identify and preserve adequate development funds from these and other sources.

**PROJECT OVERVIEW:**

HACEP invites statements of qualifications and proposals from experienced developers to respond to requirements outlined in this RFP. The selected developers will serve in a full service capacity, creating, with HACEP’s advance input and approval, a recommended development and financing program and implementing the approved program with HACEP oversight.



HACEP anticipates receiving two 9% LIHTC awards from TDHCA for two separate properties. Award resulting from this solicitation is contingent upon HACEP's successful receipt of those awards of LIHTC. Prospective developers may submit proposals for one or both properties. HACEP reserves the right, in its sole discretion to select one or multiple developers, and to award none, one, or both properties to best meet its needs. Selection as a developer for any particular project, portion of a project or modified project applies only to the specific project, and provides no implied assurance of selection on other or future projects by HACEP.

Respondents must clearly identify in their proposals which projects they are pursuing. Each response must be a separate, stand-alone submission, and will be evaluated on its own merits.

**Project #1 – Pellicano Place:** The project will be financed using 2017 9% Low Income Housing Tax Credits, traditional debt, and other funding identified by the developer. The Pellicano Place development includes the new construction of 118 units of RAD housing on a greenfield site under contract with and to be acquired by HACEP at the intersection of Pellicano Drive and Joe Battle Blvd. The development will consist of a clubhouse and seven (7), two (2) and three (3) story residential buildings, with fourteen (14) one-bedroom, (30) two-bedroom, (64) three-bedroom, and (10) four-bedroom units. This configuration will achieve a 1:1 replacement of the existing DeWetter (99) units and Pooley (19) units of public housing and relocates tenants to a High Opportunity Area. HACEP intends to apply for a revised CHAP and for a Change or Reduction in units in August, once an LIHTC award is secured. Through the Change or Reduction in Units request, HUD will allow HACEP to eliminate the larger, obsolete four and five bedroom units, add one-bedroom units and balance unit type with actual household demand.

**Project #2 - Medano Heights:** The project will be financed using 2017 9% LIHTC, traditional debt, and other funding identified by the developer. The Medano Heights development includes the new construction of 146 units of RAD housing on a greenfield site owned by HACEP at the intersection of Medano Drive and N. Desert Blvd. The development will consist of a clubhouse and seven (7), two (2) and three (3) story residential buildings, with (20) one-bedroom, (50) two-bedroom, (60) three-bedroom, and (16) four-bedroom units. This will achieve a 1:1 replacement of the existing Roosevelt public housing units and relocates tenants to a High Opportunity Area. HACEP intends to apply for a revised CHAP and for a Change or Reduction in units in August, once an LIHTC award is secured. Through the Change or Reduction in Units request, HUD will allow HACEP to eliminate or reduce the number of larger, obsolete four and five bedroom units, add one-bedroom units and balance unit type with actual household demand.

More detailed descriptions of each project are provided in **Exhibit A**.

**HACEP's RESPONSIBILITIES:**

HACEP will have the following roles and responsibilities:

- Serve as the general (managing) partner of the ownership entities to be formed for the projects.
- Provide project approvals including approving the developer's development plan, budget, pro-forma, team, bids and contracts, design, funding program and any regulatory filings done by the developer. HACEP and its team members may participate in lender and investor solicitations and/or negotiations.
- Managing all HUD requirements and approvals.
- Providing planning and resident relocation services.
- Providing funding for 50% of the predevelopment costs, which will be reimbursed at closing.
- HACEP's instrumentality EP HOME will serve as the property manager for all communities.

**DEVELOPER'S RESPONSIBILITIES:**



The selected developer will have the following roles, duties, and responsibilities:

- Creating a comprehensive development plan, budget, and schedule for HACEP's review and approval.
- Identifying and securing all necessary funding sources
- Creating and regularly updating detailed development and operating budgets.
- Providing written monthly reports to HACEP on the progress of the development efforts, including schedule, budget, and quality.
- Procuring any third party reports and evaluations necessary beyond what HACEP may already possess for the 9% LIHTC applications.
- Performing all normal and customary development work for a LIHTC project such as selecting team members as necessary; scheduling and project management; completing site and/or infrastructure assessments; managing design, entitlements, and construction; identifying, procuring and managing project funding; and managing all regulatory filings other than HUD.
- Providing post-award reports to TDHCA.
- Work with HACEP's tax credit consultant and Novogradac & Company, prepare the schedule for delivery of tax credits, complete the Low Income Housing Tax Credit Certification, meet carryover, 10% test and 8609.
- Providing all guarantees required by lenders and investors through the project development obligation period, typically defined as project stabilization and, if applicable, conversion to permanent financing.
- Attending meetings with residents, local government, and community organizations.
- Providing funding for 50% of the pre-development costs, which will be reimbursed at closing.

HACEP prefers that the developer not be a member of the HACEP affiliate ownership entity. HACEP prefers that the developer provide the development services and then terminate its participation when the guarantees are released. Other methods or proposals will be considered if offered as an alternate in the response.

**Other considerations:**

- For vendor solicitations, including debt and equity partners, HACEP requires three (3) or more qualified proposals. HACEP will have final approval of the selected partners.
- Affordable Housing Enterprises (AHE), a non-profit HACEP instrumentality, will be the general contractor and the selected construction contractor will be a subcontractor to AHE to secure exemption from sales tax on materials. The responding entity may include a general contractor in its proposal and will be subject to HACEP's approval in its sole discretion. In such event, an independent third party cost review will be required, said third party cost reviewer, shall be selected subject to mutual agreement and completed prior to closing, and which will be a project cost. If no general contractor is proposed, then HACEP will require the general contractor to be procured by the developer through competitive bidding.
- The selected developer will provide genuine training and employment opportunities to Section 3 individuals.
- The selected developer will ensure significant participation by D/M/WBE and Section 3 firms throughout the development by insuring that the D/M/WBE and Section 3 requirements set forth on [Exhibit C](#) to this RFP are satisfied.
- HACEP encourages high quality architectural design that will enhance the surrounding community. The developments will provide amenities commensurate with other properties in the area and as required by federal, state, and local ordinances and funding partners such as TDHCA based on the drawings submitted with the 9% LIHTC application.
- HACEP seeks to incorporate Green Building techniques, increase community safety through resilient design, as well as provide ample green space and parking



- **The Selected developer will assure that any proposed lender and investor is a member of a Federal Home Loan Bank and is ready and willing to sponsor an application on behalf of the applicable project for Affordable Housing Program (AHP) funds.**
- The developer will work with HACEP to undertake all marketing and lease up efforts.
- The developer must be eligible and able to pass a previous participation review with TDHCA.
- All teams submitting a proposal must disclose to HACEP, as part of the response, whether any tax credits have been awarded or anticipate to be awarded to them by TDHCA in the 2017 round, including the name of the project and the amount of tax credits awarded. Because of the annual \$3M cap, a developer with a 2017 award must propose a structure that allows them to participate with HACEP.

**Prospective developers must, or within its team, satisfy the following:**

- Experience developing communities that contribute meaningfully to their neighborhoods.
- Experience developing, constructing, and operating affordable housing, particularly under TDHCA's 9% LIHTC program.
- Experience in Green Building techniques.
- Experience developing housing for families, the elderly, and the disabled.
- Experience in site preparation and infrastructure development.
- Expertise in regulatory compliance issues.
- Expertise in Section 3, DBE/MBE/WBE, and Davis Bacon compliance.

**EXISTING HACEP CONSULTANT TEAM:**

HACEP has hired an A/E team for the Medano Heights site and, unless conditions warrant otherwise, anticipates such A/E team being the architect of record. HACEP expects the selected developer to select the A/E team for the Pellicano Place site through a request for qualifications process and consistent with HACEP's selection practices. HACEP, in its sole discretion will approve the selected architect. The general contractor will either be proposed as part of the developer's team or will be selected by the developer later with HACEP approval.

In addition, HACEP has assembled a team of outside consultants to complete other requirements of the RAD project and including:

- HUD legal counsel
- TDHCA legal counsel
- Bond Counsel
- LIHTC Consultant
- Predevelopment Project Manager

HACEP anticipates that all existing HACEP contracts will continue and be respected by the selected developer(s). HACEP reserves the right to approve all team members proposed by the developer.

**COMPENSATION PROPOSAL:**

Respondents will propose a percentage split of the developer fee between HACEP and the developer. The developer's sole compensation will be equivalent to their respective fee percentage. Fees will be paid on a pro rata basis to HACEP and developer. Proposers should be aware of fee limitations based on TDHCA and HUD RAD guidelines when developing their proposed fee splits. Also, developers will propose the General Contractor fee structure for General Conditions, Profit and Overhead with percentages respectively.

Estimates of total development cost and developer's fee for each project is included in **Exhibit F**.





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**A. RESPONSE DUE DATE:**

Responses must be submitted by **3:00 p.m.** on **May 19, 2017** to be eligible for consideration. Respondents should make early submission of the materials to avoid any risk of loss of eligibility brought about by delays, delivery related, or other problems. Facsimile and email responses will not be accepted. Responses received after the deadline for receipt will be deemed unresponsive and will be disqualified.

**B. RECEIPT OF RESPONSES:**

HACEP requests one (1) original response and four (4) copies of the response, to include an electronic copy on a flash drive, must be submitted in sealed packages and marked "**Developer Request for Proposal RFP RAD 17-R-0021. Emailed responses will not be accepted. Responses sent via facsimile will not be accepted. Only one set of financials per submission is required and should be provided in a separate envelope contained within the original submission.**" All materials must be submitted in an 8 ½" x 11" format. All submissions must be received at the following address:

**The Housing Authority of the City of El Paso**

5300 East Paisano Drive

El Paso, TX 79905

Attention: Lourdes Gomez

HACEP reserves the right to reject any or all responses wherever in its sole discretion, it is in the best interest of HACEP. The Housing Authority of the City of El Paso is an Equal Opportunity Employer. Minority and Women-owned business are encouraged to submit a proposal.

All RFP submissions must be received at **3:00 pm MDT on the May 19, 2017**

**C. INSTRUCTIONS AND NOTICE TO RESPONDENTS:**

**1. SUBMISSION AND CONTENT OF RESPONSES**

**Inquiries:** The intent of this RFP is to establish the general Scope of Services needed and to provide prospective Respondents with sufficient information to enable them to provide an acceptable response to this RFP. Every effort has been made to outline requirements, and to provide information in a format that is clear and concise. Nevertheless, questions may arise, or additional information may be needed. Questions and inquiries regarding this RFP must be submitted in writing, (email or facsimile is permissible) to: Ms. Lourdes Gomez, lgomez@hacep.org

All inquiries must be in writing and received according to the instructions above no later than **4:00 p.m. MDT, on Monday, May 8, 2017.**

Answers will be provided as a written addendum to this RFP, issued by email to all interested parties who have requested the RFP no later than **5:00 p.m. MDT on Thursday, May 11, 2017.**



## 2. SUBMISSION REQUIREMENTS

**Responses that do not include all required information will be deemed unresponsive and may be disqualified.**

Submissions must comply with the requirements of Sections A and B of this RFP. The completed and signed off checklist attached to this RFP is a mandatory submission requirement.

No proposal shall be withdrawn for a minimum period of ninety (90) days following the proposal deadline without the consent of HACEP.

Disadvantaged, minority and women-owned businesses are encouraged to respond to this solicitation.

Respondents must address their plan to meet the specific requirements of the Scope of Services as set forth in Section D of this RFP by including, at a minimum, the following:

- a. **Letter of Interest:** Respondent's submittals shall be accompanied by a Letter of Interest on the Respondent's letterhead. This letter should include the Respondent's statement of understanding for the scope of work outlined in this RFP, the commitment to perform the work expeditiously, a brief statement indicating why the Respondent believes itself to be best qualified to perform the engagement, a statement that the response is firm and irrevocable for ninety (90) days, and a statement listing the developer's 2017 9% LIHTC applications, if any, including the amount applied for, the number of applications and the location. Note that this will be used to calculate if the developer will exceed the \$3 million TDHCA cap with an award under this solicitation. Under no circumstance will HACEP contract with a developer where this award would violate the TDHCA cap.
- b. **Respondent's Experience:**  
The Respondent shall submit the following information regarding its qualifications:
  1. **Organizational Structure and Staffing:** Provide a detailed description of the organizational structure and staffing of the Respondent. List the members of the Respondent's team; indicate their areas of specialization and specific contribution to the team. Provide a brief description of previous collaboration among the members of the Respondent's team. Additionally, for each discipline represented on the Respondent's team, indicate if familiarity with state or local rules, practices or conditions is important to the effective accomplishment of the development and, if so, indicate the extent of and basis for the team's familiarity.
  2. **Profile of Principals and Key Staff:** Provide profiles of the principals and key staff to be involved in the development effort. This information should specify their roles, their existing time commitments, their previous development experience, and whether the staff will be locally based. Identify the individual who will serve as the project manager and who will direct and coordinate the Project to completion.



3. **Termination:** Indicate whether the Respondent or any Respondent team member has been terminated from a contract, and if so, describe the circumstances and outcome.
4. **Litigation:** Indicate whether the Respondent or any Respondent team member has ever sued or been sued by a public agency, and if so, describe the circumstances and outcome.
5. **Eligibility to Bid and Contract:** Any Respondent who has been disbarred from bidding on projects by any federal, state, or local government agency, must fully disclose to HACEP the details of such disbarment. Further, any person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit proposals on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity. Respondents shall complete and submit the "Certification of Proposer Regarding Debarment, Suspension, and Other Responsibility Matters" attached to this RFP.
6. **Previous Housing Development Experience:** Provide information on residential rental development projects in which the Respondent has participated. Focus on the five most recently completed developments, particularly Texas affordable partnerships with public housing authorities for which the Respondent was procured. Information should list the project name, location, project size, project completion date or current status, funding sources and amounts, ownership type, public programs utilized, income levels served (very low, moderate, market rate, or mixed), type of development (high, mid or low-rise, walk-ups, townhouses, etc.), extent of community and/or resident participation, and total development cost.  
  
In addition, complete the attached Exhibit B for four (4) projects most comparable to this RFP.  
  
Finally, include the name of a contact at each housing authority or other owner/development partner that you have prior experience with and their phone number and email address.
7. **Financing Experience:** Describe new and innovative financing techniques for raising capital that the Respondent has employed. Describe Respondent's approach to managing the financial risk associated with affordable housing development.



Demonstrate that the Respondent possesses an understanding of state and local requirements and procedures that will enable necessary equity to be raised and the effort to be efficiently completed.

Describe the financing strategy of the Respondent and the proposed methods that will be utilized to identify and obtain the maximum financial funding needed to complete the development effort while minimizing the amount of Authority funds required to successfully complete the project. Describe what funds the Respondent will commit, what other private and public funds will likely be necessary, and from what sources and when these funds will likely be available.

Respondent shall provide their approach to the division of work and responsibility between them and HACEP, as well as their requirements with regard to advance funding, compensation and similar issues. HACEP is interested in a financial structure that allows it to participate in the financial benefits of the development.

8. **Green Building Experience:** Provide information on all green building development projects in which the Respondent has participated. An important goal of HACEP is to develop an environmentally responsible development on the site(s) that can serve as a model for residential construction in El Paso and the State of Texas. It is the intent of HACEP to implement financially feasible, technologically sound strategies to conserve energy and to surpass current norms for water conservation, waste management/recycling and the quality of the indoor environment. HACEP will require that such strategies be fully explored in the development of the subject site(s).
9. **Capacity:** Respondent shall certify that the Respondent and all team members are available to start immediately. The Respondent should describe any existing time commitments of the proposed team members or their proposed staff which would impair the Respondent ability to proceed expeditiously. The respondent should identify specific individuals to be assigned to this project(s).
10. **Financial Statement:** Provide current financial statements of the Respondent prepared by a Certified Public Accountant.
11. **Insurance Requirements:** The Respondent for this project must have the following minimum insurance coverage or include plan to acquire such coverage prior to execution of a contract. Please note that any additional premiums required for this coverage will be at the expense of the Respondent in submitting an RFP proposal to HACEP.
  - Professional liability insurance in the amount of \$1,000,000 per occurrence for the Respondent and any other professionals used by the Respondent, with respect to negligent acts, errors or omissions in connection with professional services to be provided in connection



with the development project. HACEP must be added as an “additional insured”.

- Workers' compensation insurance and employer's liability insurance in the maximum statutory liability amount equal to \$1,000,000 per occurrence, naming HACEP and its affiliate non-profit as additional insured.
- Business automobile liability insurance in the amount equal to \$1,000,000 per occurrence.
- Developer must also meet the insurance requirements of the debt & equity providers.

12. **References:** Provide the name, mailing address, and telephone number of two community partner references, two housing authority references (if the Respondent has housing authority experience), two tax credit investor references, and one Housing Finance Agency reference. References must verify Respondent's representations. HACEP reserves the right to check other references as well.

13. **Certifications:** Provide the following signed Certifications in substantially the forms attached to this RFP:

- (i) Certification of Respondent Regarding Debarment, Suspension and Other Responsibility Matters,
- (ii) Non-Collusive Affidavit,
- (iii) Certification Regarding Lobbying,
- (iv) Conflicts Certification, and
- (v) Certification of Priority, and
- (vi) Respondent Profile Form
- (vii) Certifications and Representations of Respondents Non-Construction Contract HUD-5369-C

c. **Proposed Development Methods and Strategy:** Provide a narrative description of the Respondent's methods and strategy for the development of this project. Illustrate this approach with descriptions of up to four such developments, including one well established development and one recently completed development.

d. **Utilization of Disadvantaged (DBE), Minority (MBE) and Women (WBE) Business Enterprises:** Describe Respondent's approach and process to promote DBE, MBE, WBE, and Section 3 business participation in the development effort. Respondent must show proof of a good faith effort to obtain 35% minority participation in the development effort. The Respondent must comply with the requirements set forth on Exhibit C. The requirements set forth on Exhibit C must be addressed with the Respondent's responses to this RFP.



- e. **Understanding Local Requirements:** Demonstrate that the Respondent possesses an understanding of local (County and City) requirements and procedures that will enable the effort to be efficiently completed.
- f. **General Contractor Fee Structure:** Propose a fee structure for General Conditions, Profit and Overhead in percentages respectively.

**3. EVALUATION FACTORS**

A HACEP committee will evaluate the proposals received under this solicitation in accordance with the minimum information requirements and the Proposal Preparation and Submission Outline below. The evaluation process will be based on a weighted point system with the evaluation factor or sub-factor's relative weight listed immediately following each factor/sub-factor. HACEP urges all interested Respondents to carefully review the requirements of this RFP.

All submissions will be evaluated by an Evaluation Committee comprised of staff and possibly consultants. Written submissions containing the requested information will serve as the initial basis for selection of finalists. Each written proposal has a possible score of one hundred (100) points as set forth in Section E.3.a.

A short list of finalists will be established based upon the written submissions. Interviews may or may not be conducted with the finalists. These interviews of the finalists may be used to identify the top-rated Respondent(s) utilizing the same point system as described in Section E.3.a. The finalists may be required to present their qualifications to the HACEP Board.

All proposals will be ranked in accordance with this point system and contract negotiations will be initiated with the highest ranked Respondent. If negotiations between HACEP and the highest ranked Respondent fail to produce a mutual agreement, HACEP will terminate those negotiations and proceed with contract negotiations with the second highest ranked Respondent. At HACEP's own discretion, HACEP may continue that process until a mutual agreement is reached between HACEP and a Respondent.

HACEP reserves the right to reject any and/or all proposals.

HACEP further reserves the right to negotiate with the Respondent selected and to accept the proposal which is in the best interest of HACEP.

**a. Proposal Preparation and Submission Outline**

Firms shall submit proposals in accordance with the following outline to receive the maximum points (100) under this solicitation. Items which are not addressed within the proposal will be given a score of zero (0).

1.1 Evidence of the Respondent's ability to perform the work as indicated by profiles of the principles and staff and team members and explanation of their professional, technical competence and relevant experience with projects of similar size and scope. Please identify which team members will be assigned to this project. **(10 points)**



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1.2 Qualification of key personnel, location of staff, and resumes, including the firm's capacity as it relates to size and available resources to complete the development. **(10 points)**

1.3 Firm's proposed project approach and demonstrated ability to meet established deadlines. **(5 points)**

1.4 Demonstration of the Respondent's financial stability and ability to provide adequate assurances for completion of the development. **(10 points)**

1.5 Provide evidence of demonstrated knowledge and familiarity of applicable governmental regulations and codes as required by the U.S. Department of Housing and Urban Development, State of Texas, TDHCA, City of El Paso and any other agencies having authority. Please identify any experience or understanding of the HUD RAD program. **(10 points)**

1.6 Compensation Proposal. **(40 points)**

1.7 References **(10 points)**

1.8 Status of Respondent as a DBE, MBE, WBE, Section 3 Business concern or Statement of Respondent's Section 3 Plan. **(5 points)**

#### **4. ACKNOWLEDGEMENT OF AMENDMENTS**

The Respondent shall acknowledge in its response to this Request for Proposal, receipt of any amendment(s). The Respondent's failure to acknowledge an amendment may result in rejection of the response.

HACEP will endeavor to provide copies of applicable amendment or addenda to all potential Respondents to whom this Request for Qualifications has been transmitted. However, it will be the responsibility of each Respondent to make inquiry as to the existence and content of amendment or addenda, as the same shall become part of this RFP and all Respondents will be bound thereby, whether or not the amendment or addenda are actually received by the Respondent.

The Respondent shall acknowledge in its response to this Request for Proposal, receipt of and acceptance to the Memorandum of Understanding (MOU) included as Exhibit D, the Owner and Contractor agreement included as Exhibit E, the General Terms for Construction Contract as Exhibit F, Developer Costs and Fees included as Exhibit G and General Conditions included as Exhibit H.

#### **5. COMPLETE AND ACCURATE SUBMISSION**





A Respondent's failure to provide accurate information in response to this Request for Qualifications may disqualify the Respondent from further participation in the selection process.

Qualifications may be corrected, modified, or withdrawn, provided that the correction, modification, or request for withdrawal is made by the Respondent, in writing, and is received by HACEP; Juan Pulido, prior to the date and time designated in the RFP for final receipt of submissions. After such date and time, the Respondent may not change any provision of its proposal in a manner prejudicial to the interest of HACEP and/or fair competition. Respondents are solely responsible for ensuring timely delivery by courier services; HACEP will not accept any responses to this solicitation, after the final deadline, due to Respondent's misunderstanding of courier service hours and delivery times.

**6. RETENTION**

All submissions are the property of HACEP and shall be retained by HACEP. Responses will not be returned.

**7. CANCELLATION/WAIVER**

HACEP reserves the right to cancel this RFP or to reject, in whole or in part, any and all submissions received in response to this RFP upon its determination that such cancellation or rejection is in the best interest of HACEP. HACEP further reserves the right to waive any minor informality in any submissions received, if it is in the public interest to do so. The decision as to who shall receive a contract award, or whether or not an award shall be made as a result of this RFP, shall be at the absolute sole discretion of HACEP. In addition, multiple awards may be made.

**8. KEY PERSONNEL**

The key personnel specified by the successful Respondent will be considered essential to the work to be performed by the successful Respondent. Prior to diverting any of the key personnel for any reason(s), the contractor shall notify HACEP in writing, at least thirty (30) calendar days in advance, and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the contract. The firm shall not change key personnel or hours to be devoted, before or after contract award, without written permission from HACEP.

**9. PART OF CONTRACT**

The contents of the documents submitted by the successful Respondent may become part of any contract award at the sole discretion of HACEP.

**10. NO COMPENSATION FOR RESPONSE**

Respondent will not be compensated for work or costs related to preparation and submission of this proposal. Respondents selected for further interviews and negotiations will be responsible for all expenses incurred during these processes.

**F. INITIAL REVIEW**





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All responses will be initially reviewed to determine compliance with the response format requirements specified within this RFP. Responses that are not complete and accurate; and, do not comply with these requirements may result in disqualification from the solicitation without further review.

**G. AUTHORITY'S OPTIONS**

HACEP reserves the right to cancel this RFP, or to reject, in whole or in part, any and all submissions received in response to this RFP, upon its determination that such cancellation or rejection is in the best interest of HACEP. HACEP further reserves the right to waive any minor informality, or the failure of any Respondent to comply therewith, if it is in the public interest to do so. HACEP will pay no compensation to any Respondent for any costs related to preparation or submittal of the qualifications.

HACEP will reject the qualifications of any Respondent who is suspended and/or debarred by HUD or other government agency from providing services to public housing authorities, and reserves the right to reject the proposal of any Respondent who has previously failed to perform any contract satisfactorily for HACEP.

The determination of the criteria and process whereby submissions are evaluated and the decision as to whom shall receive a contract award shall be at the sole and absolute discretion of HACEP.

In the event a selected developer and HACEP cannot negotiate a satisfactory development agreement and business terms, HACEP reserves the right to move on to negotiations with the next highest selected developer(s).

By submitting a response to this RFP, Respondent acknowledges and agrees to the following conditions:

- All submissions in response to this RFP become the property of HACEP. As such, all submissions will be considered public records and will be subject to public review.
- No Respondent shall initiate contact with any HACEP employee and/or member of the Board of Commissioners of HACEP regarding this RFP until after completion of the selection process, Board of Commissioners' approval and execution of a contract. If any Respondent has any reason, not related to this RFP, to contact any of the above parties, they will be required to disclose to that party that they are a respondent in this solicitation. Failure to adhere to these requirements may result in disqualification from the solicitation process.
- Respondent shall not have employed or retained any company or person, other than a bona fide employee working solely for the Respondent to solicit or secure the execution of a contract with HACEP. Respondent certifies that they have not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Respondent, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award of or the making of a contract from this solicitation.



EXHIBIT A

**PELLICANO PLACE**

Introduction

The Housing Authority of the City of El Paso (“**HACEP**”), in conjunction with its affiliated entities including Paisano Housing Redevelopment Corporation (“**PHRC**”) and selected Development Partner will rehabilitate the Pellicano Place apartments (“**Pellicano**”) using 9% low income housing tax credits through the At-Risk Set Aside funding pool administered by the Texas Department of Housing and Community Affairs (“**TDHCA**”).

Pellicano is a mixed apartment development that will house a diverse group of residents. HACEP and its Development Partner is proposing to utilize 9% tax credits and other financing sources to complete redevelop and relocate residences to Pellicano. This project, if awarded, would be part of HACEP’s conversion of its public housing units at Pellicano as part of the federal Rental Assistance Demonstration program (“**RAD**”). HACEP is in the midst of a portfolio-wide RAD conversion of virtually all of its public housing units. The RAD program allows HACEP to utilize private and public financing, at no cost to local taxpayers, to renovate, rehabilitation and/or re-construct public housing apartments. After a property undergoes a “RAD conversion,” the residents transition from one federally subsidized housing program (public housing) to a more streamlined and efficient program (project based rental assistance), which is a seamless transition from the resident’s perspective but which benefits HACEP and the community. After a RAD conversion is complete, the residents enjoy a more modern, more energy-efficient, more secure, and more aesthetically pleasing residential property. HACEP benefits as well, from not only a cash flow perspective, but also HACEP obtains a newer apartment that is easier to maintain and lease. The community benefits as well, as the newly renovated property adds to and enhances the surrounding neighborhood.

Statement 2

Pellicano supports breaking the cycle of poverty and supporting upward mobility by either directly providing or facilitating availability of social services. It provides a basis and guide to aid all involved parties, and provides residents with affordable housing opportunities. With the help of various parties, El Paso will connect neighborhoods and develop a foundation which will help it move towards an exciting future. With Paisano Housing Redevelopment Corporation, a non-profit public facility corporation under HACEP (“**PHRC**”), as part of the development team, Pellicano addresses the plan’s endeavors, which emphasizes housing in El Paso.

Pellicano complies with the overall goals to maintain sustainable and an efficient housing supply, preserve and revitalize El Paso’s neighborhoods, transformation of neighborhoods into walkable and connected communities. Expand affordable housing opportunities by utilizing new tools, technologies, and partnerships.

Pellicano is located in an area in which the development will be considered infill. This will grant opportunities to residents to access museums, cultural affairs, civic buildings, and educational experiences.

The development welcomes non-traditional households, promoting mixed populations and embracing diversity. As traditional households evolve, so will the financial capacities. These factors are playing an unprecedented role in determining housing needs, and availability to a wide array of choices is essential. Pellicano provides the neighborhood quality and affordable housing. It will serve different populations without making any social economic distinctions. As part of this effort, special needs populations, in particular veterans and homeless, are served and ADA units are built.



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It encourages green practices and conserves environmental resources, reducing the cost of infrastructure. As part of the design, it will seek to incorporate the applicable criteria necessary to obtain LEED Certification. It also promotes infill developments, preserving existing neighborhoods. By utilizing available land, incorporation of neighborhoods is endorsed, deterring the need to move to the outskirts of town.

The development also has “front door” access to public transportation. Residents will have availability to all major travel corridors and the newly added Rapid Transportation System. Another component of making transit more accessible is the incorporation of bicycle parking that will be separate from regular automobile parking. Through this amenity, residents will be able to capitalize on the network of streets. Making this alternative form of transportation more attractive, and dependency on automobiles unwarranted. Neighborhood amenities are also accessible. Overall the development promotes the concept of live and work closer together, and this is especially valuable for family members who are care providers.

Pellicano also aids in the effort to stimulate and enhance economic development in the surrounding area. The construction of this development will not only revitalize an historic neighborhood, but protect them as well. Additionally, through collaboration between the City of El Paso, Workforce Solutions Borderplex, and HACEP, a diverse workforce is incorporated into the process. As a result of this, a number of programs, including Section 3, will be utilized to help this development come to life. Through the Family Self-Sufficiency (FSS) Program administered by HACEP, home ownership is also encouraged. FSS utilizes resources to assist head of households set goals and develop an action plan. Over a period of time, residents achieve economic security, saving a significant amount to buy and sustain a house. HACEP’s FSS Program is the leading home ownership placement program in the El Paso area, with significant history over several years of transitioning low-income residents from subsidized affordable housing to the American dream of home ownership.

### Statement 3

Pellicano is a housing development which applied for tax credit financing under the At-Risk Set-Aside, and the development is part the RAD initiative. Due to the redevelopment and relocation of Pellicano, TDHCA will consider the development New Construction. This effort will move residents from a high density census tract to a high opportunity area providing schools with educational excellence and economic growth.

This type of development meets the TDHCA criteria of promoting the edification of high quality housing. Unit size and features have been enhanced with no additional charge to the residents. These amenities will enhance the overall quality of life for the residents, and incorporate Green Building elements. Over 20% of the low income units are 50% or less of the AMGI, and at least 10% of the rents are at 30% or less of the AMGI.

Pellicano is committed to serve and support Texans most in need. It will provide a combination of supportive services along with adequate space for these. These services may include, but not limited to GED preparation classes, annual health fair, Notary services, and/or providing a full-time residents service coordinator. These services may be modified as resident needs change. In conjunction to these services, the development is including a set of units specifically with residents with special needs. These units are over and above the mandated handicap and visually and hearing impaired units.

Residents are given an opportunity for inclusiveness and afforded an opportunity to access public services because although the development is within ½ a mile from public transportation, it is also conveniently located near various community assets. Exceptional schools, medical facility, outdoor public recreation, religious institution, post office, convenience store, and restaurants to name a few.



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The community is engaged and has provided vital support to Pellicano. The City of El Paso, agreed to pass a resolution of local support and commitment. Backing for this development continues with the support of various community organizations such as Project Bravo and the YWCA.

Pellicano was been awarded top scores for efficiently using the limited resources available, and abiding to all previous responsibilities. The development meets the goals, objectives, and the overall criteria set forth by TDHCA.

#### Statement 4

HACEP has a statutory mandate to serve low-income families in El Paso. This means that HACEP has been, and will remain, the leading provider of affordable housing in El Paso. HACEP has a longstanding commitment to and partnership with the City of El Paso. It's local presence and long-term accountability dates to almost 80 years of continuous service.

Prior to the initiation of the RAD conversion, HACEP received about \$10 million a year in Capital Funds from the US Department of Housing and Urban Development (HUD) for the Rehabilitation/Modernization of approximately 6,000 public housing units. Once RAD is completed, although Capital Funds will cease to be provided under that name, the concept of funding long-term care and maintenance of HACEP's housing will remain as part of the cash-flow structure of HACEP's properties.

In 2005, HACEP was awarded from HUD a HOPE VI Revitalization grant in the amount of \$20 million for the revitalization of Alamito Apartments, a development comprised 349 public housing units. HACEP obtained 4% tax credits for the 76 elderly units of the Alamito Terrace complex (General Partner – Alamito Terrace GP, LLC) and received \$3,358,396 in tax credit equity contributions, and for 142 multi-family units of the Alamito Gardens complex (General Partner – Alamito Gardens GP, LLC) receiving \$7,129,987 in tax credit equity contributions.

As a result of President Obama's American Recovery and Reinvestment Act (ARRA) HACEP was awarded \$12.7 million in Capital Funds from HUD for the rehabilitation of public housing properties. HACEP successfully met the shortened obligation and expenses deadlines of this grant. HACEP replaced the roofs of over 50% of the total public housing units. Additionally, HACEP applied for a competitive ARRA grant for the development of a Green Community and was successful in receiving a grant for \$8.3 million. The Paisano Green Community was completed in June 2012.

Recently, HACEP partnered with a third-party developer to obtain housing tax credits. HACEP, the Hunt Companies, and Investment Builders, Inc. (IBI), broke ground on 'Eastside Crossings,' a mixed-income, mixed-finance apartment community. The property features 188 units of conventional public housing, affordable housing, and market rate units. The development features units built to LEED Silver energy efficiency standards. Construction of the \$22 million community was completed in fall 2014.

In 2014, the Texas Department of Housing and Community Affairs awarded HACEP \$2.2 million in housing tax credits for the Haymon Krupp and Tays development. Construction begun in 2015, and was recently completed. Additionally, in July 2015 HACEP was awarded approximately \$2.5 million in housing tax credits for the reconstruction of Thomas Westfall Memorial Apartments, which was to top application in the At-Risk set aside, and Sherman Plaza. Construction completion is scheduled for December 2017. In July 2016 HACEP was awarded \$3 million in housing tax credits for the reconstruction of two new developments, which will be



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named Commissioners Corner and Gonzalez Apartments totaling 338 units. These developments receive full support from the City of El Paso.

#### Statement 5

Since the adoption of the first City Plan of El Paso in 1925, this document has become the cornerstone in making El Paso the city it is today. It has stayed true to its purpose of promoting the convenience of its population, improve health, provide different recreational options, and beautify El Paso as a whole. El Paso may be the 19<sup>th</sup> largest city in the nation, but more importantly, it ranks as the safest city in the nation. It's not only the home to Fort Bliss, but it also has become the retirement place of choice for many troops. These factors, along with historic advantages and economic diversity, play a factor to the City's success.

Pellicano meets the City's smart growth initiative as set out in Plan El Paso and established sound business practices to ensure the Mission, Vision, and Values of the City of El Paso are preserved. Pellicano conserves environmental resources, spurs economic investment, and reduces the need for infrastructure and services. Although the development is a relocation and redevelopment, it is considered an infill development. Its strategic location provides a housing option, which has activities within walking distance, proximity to neighborhood services, and public transportation alleviating the dependency on automobiles.

Pellicano will bring stability to its neighborhood not only by building affordable housing, which include ADA and VHI units, but through different resident programs. The development encourages the participation of community associations, JWRC Resident Council plays a vital role in addressing the needs of the residents. Supportive Services, which are tailored to the community, will be available to the residents as well. Residents are encouraged to participate in the Annual Art Contest and the "HOT" Summer Program, which is a day proclaimed by the Mayor. The developer also sponsors the Family Self Sufficiency program, to promote home ownership.

The project will promote a healthy, productive, and safe community. It will partake in various health fairs. Additionally, the developer, in collaboration with the US VA has hosted the Community Health Summit and has been recognized by Paso Del Norte for being Smoke Free. The development will promote and provide a safe and healthy environment to our four legged residents. As an outreach to Vets and other special needs residents is made, service animals are welcomed. Enterprise Green Communities or LEED initiatives are planned to be incorporated into the design of this development, thus reducing operational costs and energy consumption.

Pellicano will comply with environmental regulatory requirements. With the help of various local, state, and federal agencies, the rehabilitation of these units will ensure the development meets all necessary codes. Disposing of solid waste is a City wide challenge. Contributing to the solutions, community gardens may be incorporated. Through a key-hole system, not only will compost will be provided to the garden, but it will require very low maintenance as well. Through pest control, Pellicano will be treated for "unwelcomed" guests assisting in hosting a healthy community and surrounding areas.

Recovering from an extreme weather event can be achieved through many ways, but our strongest ally is education. Though the help of the resident councils and by hosting health fairs, thus instructing the residents will help minimize the damage families will endure. Achieving individual resiliency for El Paso residents.



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The City of El Paso is much more than brick and mortar, its foundation is its people, and with the help of various parties, Pellicano will help the City of El Paso connect neighborhoods and develop a society which will help it move towards an exciting future.





## MEDANO HEIGHTS

### Introduction

The Housing Authority of the City of El Paso (“**HACEP**”), in conjunction with its affiliated entities including Paisano Housing Redevelopment Corporation (“**PHRC**”) and its Development Partner will rehabilitate the Medano Heights apartments (“**Medano**”) using 9% low income housing tax credits through the At-Risk Set Aside funding pool administered by the Texas Department of Housing and Community Affairs (“**TDHCA**”).

Medano is a mixed apartment development that will house a diverse group of residents. HACEP is proposing to utilize 9% tax credits and other financing sources to complete redevelopment and relocate residences to Medano. This project, if awarded, will be part of HACEP’s conversion of its public housing units at Medano as part of the federal Rental Assistance Demonstration program (“**RAD**”). HACEP is in the midst of a portfolio-wide RAD conversion of virtually all of its public housing units. The RAD program allows HACEP to utilize private and public financing, at no cost to local taxpayers, to renovate, rehabilitation and/or re-construct public housing apartments. After a property undergoes a “RAD conversion,” the residents transition from one federally subsidized housing program (public housing) to a more streamlined and efficient program (project based rental assistance), which is a seamless transition from the resident’s perspective but which benefits HACEP and the community. After a RAD conversion is complete, the residents enjoy a more modern, more energy-efficient, more secure, and more aesthetically pleasing residential property. HACEP benefits as well, from not only a cash flow perspective, but also HACEP obtains a newer apartment that is easier to maintain and lease. The community benefits as well, as the newly renovated property adds to and enhances the surrounding neighborhood.

### Statement 2

Medano supports breaking the cycle of poverty and supporting upward mobility by either directly providing or facilitating availability of social services. It provides a basis and guide to aid all involved parties, and provides residents with affordable housing opportunities. With the help of various parties, El Paso will connect neighborhoods and develop a foundation which will help it move towards an exciting future. With Paisano Housing Redevelopment Corporation, a non-profit public facility corporation under HACEP (“**PHRC**”), as part of the development team, Medano addresses the plan’s endeavors, which emphasizes housing in El Paso.

Medano complies with the overall goals to maintain sustainable and an efficient housing supply, preserve and revitalize El Paso’s neighborhoods, transformation of neighborhoods into walkable and connected communities. Expand affordable housing opportunities by utilizing new tools, technologies, and partnerships.

Medano is located in an area in which the development will be considered infill. This will grant opportunities to residents to access museums, cultural affairs, civic buildings, and educational experiences.

The development welcomes non-traditional households, promoting mixed populations and embracing diversity. As traditional households evolve, so will the financial capacities. These factors are playing an unprecedented role in determining housing needs, and availability to a wide array of choices is essential. Medano provides the neighborhood quality and affordable housing. It will serve different populations without making any social economic distinctions. As part of this effort, special needs populations, in particular, veterans and homeless are served and ADA units are built.



It encourages green practices and conserves environmental resources, reducing the cost of infrastructure. As part of the design, it will seek to incorporate the applicable criteria necessary to obtain LEED Certification. It also promotes infill developments, preserving existing neighborhoods. By utilizing available land, incorporation of neighborhoods is endorsed, deterring the need to move to the outskirts of town.

The development also has “front door” access to public transportation. Residents will have availability to all major travel corridors and the newly added Rapid Transportation System. Another component of making transit more accessible is the incorporation of bicycle parking that will be separate from regular automobile parking. Through this amenity, residents will be able to capitalize on the network of streets. Making this alternative form of transportation more attractive, and dependency on automobiles unwarranted. Neighborhood amenities are also accessible. Overall the development promotes the concept of live and work closer together, and this is especially valuable for family members who are care providers.

Medano also aids in the effort to stimulate and enhance economic development in the surrounding area. The construction of this development will not only revitalize an historic neighborhood, but protect them as well. Additionally, through collaboration between the City of El Paso, Workforce Solutions Borderplex, and HACEP, a diverse workforce is incorporated into the process. As a result of this, a number of programs, including Section 3, will be utilized to help this development come to life. Through the Family Self-Sufficiency (FSS) Program administered by HACEP, home ownership is also encouraged. FSS utilizes resources to assist head of households set goals and develop an action plan. Over a period of time, residents achieve economic security, saving a significant amount to buy and sustain a house. HACEP’s FSS Program is the leading home ownership placement program in the El Paso area, with significant history over several years of transitioning low-income residents from subsidized affordable housing to the American dream of home ownership.

### Statement 3

Medano is a housing development which applied for tax credit financing under the At-Risk Set-Aside, and the development is part the RAD initiative. Due to the redevelopment and relocation of Medano, TDHCA will consider the development New Construction. This effort will move residents from a high density census tract to a high opportunity area providing schools with educational excellence and economic growth.

This type of development meets the TDHCA criteria of promoting the edification of high quality housing. Unit size and features have been enhanced with no additional charge to the residents. These amenities will enhance the overall quality of life for the residents, and incorporate Green Building elements. Over 20% of the low income units are 50% or less of the AMGI, and at least 10% of the rents are at 30% or less of the AMGI.

Medano is committed to serve and support Texans most in need. It will provide a combination of supportive services along with adequate space for these. These services may include, but not limited to GED preparation classes, annual health fair, Notary services, and/or providing a full-time residents service coordinator. These services may be modified as resident needs change. In conjunction to these services, the development is including a set of units specifically with residents with special needs. These units are over and above the mandated handicap and visually and hearing impaired units.

Residents are given an opportunity for inclusiveness and afforded an opportunity to access public services because although the development is with-in ½ a mile from public transportation, it is also conveniently located near various community assets. Exceptional schools, medical facility, outdoor public recreation, religious institution, post office, convenience store, and restaurants to name of few.





The community is engaged and has provided vital support to Medano. The City of El Paso, agreed to pass a resolution of local support and commitment. Backing for this development continues with the support of various community organizations such as Project Bravo and the YWCA.

Medano was been awarded top scores for efficiently using the limited resources available, and abiding to all previous responsibilities. The development meets the goals, objectives, and the overall criteria set forth by TDHCA.

#### Statement 4

HACEP has a statutory mandate to serve low-income families in El Paso. This means that HACEP has been, and will remain, the leading provider of affordable housing in El Paso. HACEP has a longstanding commitment to and partnership with the City of El Paso. It's local presence and long-term accountability dates to almost 80 years of continuous service.

Prior to the initiation of the RAD conversion, HACEP received about \$10 million a year in Capital Funds from the US Department of Housing and Urban Development (HUD) for the Rehabilitation/Modernization of approximately 6,000 public housing units. Once RAD is completed, although Capital Funds will cease to be provided under that name, the concept of funding long-term care and maintenance of HACEP's housing will remain as part of the cash-flow structure of HACEP's properties.

In 2005, HACEP was awarded from HUD a HOPE VI Revitalization grant in the amount of \$20 million for the revitalization of Alamito Apartments, a development comprised 349 public housing units. HACEP obtained 4% tax credits for the 76 elderly units of the Alamito Terrace complex (General Partner – Alamito Terrace GP, LLC) and received \$3,358,396 in tax credit equity contributions, and for 142 multi-family units of the Alamito Gardens complex (General Partner – Alamito Gardens GP, LLC) receiving \$7,129,987 in tax credit equity contributions.

As a result of President Obama's American Recovery and Reinvestment Act (ARRA) HACEP was awarded \$12.7 million in Capital Funds from HUD for the rehabilitation of public housing properties. HACEP successfully met the shortened obligation and expenses deadlines of this grant. HACEP replaced the roofs of over 50% of the total public housing units. Additionally, HACEP applied for a competitive ARRA grant for the development of a Green Community and was successful in receiving a grant for \$8.3 million. The Paisano Green Community was completed in June 2012.

Recently, HACEP partnered with a third-party developer to obtain housing tax credits. HACEP, the Hunt Companies, and Investment Builders, Inc. (IBI), broke ground on 'Eastside Crossings,' a mixed-income, mixed-finance apartment community. The property features 188 units of conventional public housing, affordable housing, and market rate units. The development features units built to LEED Silver energy efficiency standards. Construction of the \$22 million community was completed in fall 2014.

In 2014, the Texas Department of Housing and Community Affairs awarded HACEP \$2.2 million in housing tax credits for the Haymon Krupp and Tays development. Construction begun in 2015, and was recently completed. Additionally, in July 2015 HACEP was awarded approximately \$2.5 million in housing tax credits for the reconstruction of Thomas Westfall Memorial Apartments, which was to top application in the At-Risk set aside, and Sherman Plaza. Construction completion is scheduled for December 2017. This past July 2016 HACEP was awarded \$3 million in housing tax credits for the reconstruction of two new developments, which will be named Commissioners Corner and Gonzalez Apartments totaling 338 units. These development receive full support from the City of El Paso.



Statement 5

Since the adoption of the first City Plan of El Paso in 1925, this document has become the cornerstone in making El Paso the city it is today. It has stayed true to its purpose of promoting the convenience of its population, improve health, provide different recreational options, and beautify El Paso as a whole. El Paso may be the 19<sup>th</sup> largest city in the nation, but more importantly, it ranks as the safest city in the nation. It is not only the home to Fort Bliss, but it also has become the retirement place of choice for many troops. These factors, along with historic advantages and economic diversity, play a factor to the City's success.

Medano meets the City's smart growth initiative as set out in Plan El Paso and established sound business practices to ensure the Mission, Vision, and Values of the City of El Paso are preserved. Medano conserves environmental resources, spurs economic investment, and reduces the need for infrastructure and services. Although the development is a relocation and redevelopment, it is considered an infill development. Its strategic location provides a housing option, which has activities within walking distance, proximity to neighborhood services, and public transportation alleviating the dependency on automobiles.

Medano will bring stability to its neighborhood not only by building affordable housing, which include ADA and VHI units, but through different resident programs. The development encourages the participation of community associations, JWRC Resident Council plays a vital role in addressing the needs of the residents. Supportive Services, which are tailored to the community, will be available to the residents as well. Residents are encouraged to participate in the Annual Art Contest and the "HOT" Summer Program, which is a day proclaimed by the Mayor. The developer also sponsors the Family Self Sufficiency program, to promote home ownership.

The project will promote a healthy, productive, and safe community. It will partake in various health fairs. Additionally, the developer, in collaboration with the US VA has hosted the Community Health Summit and has been recognized by Paso Del Norte for being Smoke Free. The development will promote and provide a safe and healthy environment to our four legged residents. As an outreach to Vets and other special needs residents is made, service animals are welcomed. Enterprise Green Communities or LEED initiatives will be incorporated into the design of this development, thus reducing operational costs and energy consumption.

Medano will comply with environmental regulatory requirements. With the help of various local, state, and federal agencies, the rehabilitation of these units will ensure the development meets all necessary codes. Disposing of solid waste is a City wide challenge. Contributing to the solutions, community gardens may be incorporated. Through a key-hole system, not only will compost be provided to the garden, but it will require very low maintenance as well. Through pest control, Medano will be treated for "unwelcomed" guests assisting in hosting a healthy community and surrounding areas.

Recovering from an extreme weather event can be achieved through many ways, but our strongest ally is education. Though the help of the resident councils and by hosting health fairs, thus instructing the residents will help minimize the damage families will endure. Achieving individual resiliency for El Paso residents.

The City of El Paso is much more than brick and mortar, its foundation is its people, and with the help of various parties, Medano will help the City of El Paso connect neighborhoods and develop a society which will help it move towards an exciting future.



**EXHIBIT B**

**COMPARABLE PROJECTS EXPERIENCE**

For each project described in Section put an "x" in the box if the Respondent performed the function or utilized the described financing. For Section 3/DBE/MBE/WBE, insert the appropriate numbers. If possible, please use projects similar to those covered by the RFP.

	<b>Project 1</b>	<b>Project 2</b>	<b>Project 3</b>	<b>Project 4</b>
<b>NAME:</b>				
<b>Real Estate</b>				
Development Feasibility Studies				
Sale of Real Estate				
Real Estate Redevelopment				
Zoning Approval				
Subdivision Approval				
Site Preparation Work				
Environmental Work				
Dedicated Infrastructure				
Other (specify)				
<b>Financing Employed</b>				
Financial Feasibility Studies				
LIHTC				
HUD RAD				
HOPE VI				
CDBG (also HOME, RHF, etc.)				
FHA Multi-Family Insurance				



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	Project 1	Project 2	Project 3	Project 4
Fannie Mae DUS				
Federal Home Loan Bank				
Other Insurance Programs				
County Financing Programs				
Bank Financing				
Bond Financing				
Bond Underwriting				
Tax Credit Syndicator				
Personal Guarantees				
Corporate Guarantees				
<b>Construction Services</b>				
Construction Contractor				
Construction Manager				
Infrastructure Construction				
Design Services				
<b>Property Management</b>				
Marketing Plans				
Property Manager				
Site Maintenance				
Site Security				



	Project 1	Project 2	Project 3	Project 4
<b>Section 3/MBE/WBE</b>				
Dollars Paid as % of Total Development Cost				
# of Persons Employed				
<b>Miscellaneous</b>				
Mixed Finance Proposal				
Supportive Services				

- a) Describe new and innovative financing techniques for raising capital employed by the respondent.
- b) Describe the approach to managing the financial risk associated with each project.
- c) Describe how each project was kept on budget and on schedule. Describe any impediments that occurred and how they were handled.
- d) Provide a statement of how you will honor all financial guarantees, should the need arise. The statement should include more than a reference to the financial statements.
- e) Describe prior Public Housing Authority projects; inclusive of the financing structure and the proposed developer fee structure for each.



EXHIBIT C

Use of Disadvantaged Business Enterprises (DBEs), Minority Business Enterprises (MBEs), and Women's Business Enterprises (WBEs)

**A. REQUIRED EFFORTS**

1. Consistent with Presidential Executive Order 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, HACEP shall make efforts to ensure that small and minority-owned businesses, women's business enterprises, disadvantaged business enterprises, labor surplus area businesses, and individuals or firms located in or owned in substantial part by persons residing in the area of an Authority project are used when possible. Such efforts shall include, but shall not be limited to:
  - a. Including such firms, when qualified, on solicitation mailing lists;
  - b. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
  - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
  - d. Establishing delivery schedules, where possible, which encourage participation by such firms;
  - e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
  - f. Including in contracts a clause requiring contractors, to the greatest extent feasible, to provide opportunities for training and employment generated from the expenditure of Section 3 covered funds to Section 3 residents in the order of priority prescribed in 24 CFR 135.34(a), and to award Section 3 covered subcontracts to Section 3 business concerns in the order of priority set forth in 24 CFR 135.36(a), requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed herein.
2. Goals may be established periodically by HACEP for participation by small businesses, minority-owned businesses, women's business enterprises, disadvantaged business enterprises, labor surplus area businesses, and business concerns which are located in, or owned in substantial part by persons residing in the area of an Authority project, in HACEP's prime contracts and subcontracting opportunities.



B. DEFINITIONS

1. A small business concern is defined as a business which is independently owned and operated, not dominant in the field of operation in which it is bidding on government contracts, and qualified as a small business under the criteria and size standards in 13 CFR Part 121.
2. A minority-owned business is defined as a business which is at least 51% owned by one (1) or more minority group members; or, in the case of a publicly-owned business, one (1) in which at least 51% of its voting stock is owned by one (1) or more minority group members, and whose management and daily business operations are controlled by one (1) or more such individuals. Minority group members include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.
3. A women's business enterprise is defined as a business that's at least 51% owned by a woman or women who are U.S. citizens and who also control or operate the business.
4. A labor surplus area business is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the U. S. Department of Labor in 20 CFR 654, Subpart A, and in lists of labor surplus areas published by the Employment and Training Administration.
5. A Section 3 Business concern is defined as one (a) that is 51% or more owned by Section 3 Residents; or (b) whose permanent, full-time employees include persons, at least 30% of whom are currently Section 3 Residents, or within three (3) years of the date of first employment with the business concern were Section 3 Residents; or (c) that provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (a) or (b) in this definition of "Section 3 business concern."
6. A Disadvantaged Business Enterprise is a small business concern that is certified as being (a) at least 51 percent owned by one (1) or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one (1) or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one (1) or more of the socially and economically disadvantaged individuals who own it. "Socially and Economically Disadvantaged individuals" means those individuals who are citizens or lawfully admitted permanent residents of the United States and who are minorities or individuals found by the Small Business Administration pursuant to Section 8(a) of the Small Business Act to be disadvantaged.



**C. SECTION 3 REQUIREMENTS**

1. **Section 3 Purpose - Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) (Section 3) requires HACEP to ensure that employment and other economic and business opportunities generated by HUD financial assistance, to the greatest extent feasible, are directed to public housing residents and other low-income persons, particularly recipients of government housing assistance, and business concerns that provide economic opportunities to low- and very-low income persons.**
2. **Section 3 Contracting Policy and Procedure - All contractors/businesses seeking Section 3 preference must complete certifications, as appropriate, as acknowledgement of the Section 3 contracting and employment provisions required by this section. Such certifications shall be adequately supported with appropriate documentation as referenced in the form.**
3. **Resident Hiring Requirements - HACEP has adopted the following threshold for resident hiring that is to be used on all construction contracts, service contracts and professional service contracts that contain a labor component. It is expected that an appropriate number of Section 3 persons with particular qualifications or a willingness to begin unskilled labor will be able to participate in HACEP's contracted labor efforts. A prime contractor may satisfy HACEP's resident hiring requirements through its own work force, its subcontractors, or any combination thereof.**

<b>CONTRACT THRESHOLD AMOUNT FOR CONSTRUCTION OR SERVICE CONTRACTS</b>	<b>SECTION 3 INVOLVEMENT AS A % OF TOTAL LABOR DOLLARS</b>
\$25,000 or more	5% of the labor dollars

4. It is expected that an appropriate number of Section 3 persons with particular qualifications or willingness to begin unskilled labor will be able to participate in contracted labor efforts. If that does not occur, a prime contractor, on its own or through its subcontractor(s), may satisfy the Section 3 requirement set forth above by doing the following:
  - a. Subcontracting or joint venturing with a resident owned business. The business must be 51% or more owned by public housing residents, or subcontract/joint venture with a business that employs full-time, 30% or more public housing residents, or low and very-income individuals within the City of El Paso or other qualified low income persons, or
  - b. Direct hiring of public housing residents and/or low and very low-income neighborhood residents, or





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c. Incurring the cost of providing skilled training for public housing residents in an amount commensurate with 5% of the total contract amount.

**CERTIFICATION OF RESPONDENT REGARDING SECTION 3 REQUIREMENTS**

**Respondent hereby acknowledges the Section 3 contracting and employment provisions required and set forth by this section. Supporting appropriate documentation is attached hereto.**

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

Signature of Key Principal of Respondent



**EXHIBIT D**

**MEMORANDUM OF UNDERSTANDING**

THIS MEMORANDUM OF UNDERSTANDING (this “MOU”), effective as of \_\_\_\_\_, 20\_\_ (the “**Effective Date**”), is entered into by and between the HOUSING AUTHORITY OF THE CITY OF EL PASO (“HACEP”), a Texas municipal public housing authority, PAISANO HOUSING REDEVELOPMENT CORPORATION, a Texas nonprofit corporation (“Paisano”), and \_\_\_\_\_ (the “**Development Partner**”), a Texas corporation, regarding a \_\_\_\_\_ project known as [Project Name]. HACEP, Paisano, and the Development Partner are herein sometimes individually referred to as a “**Party**” and collectively as the “**Parties**.”

**RECITALS**

A. HACEP issued Request for Proposal \_\_\_\_\_ (the “**RFP**”) for individuals interested in serving as third party developers to HACEP in the renovation of affordable housing communities. Specifically, HACEP is \_\_\_\_\_. The RFP is incorporated by reference as if fully set forth herein and made a part hereof.

B. The RFP invited proposals for \_\_\_\_\_ ( ) separate HACEP projects. The RFP specified that [insert info re owner entity structure, developer expectations, financing information, etc. from RFP].

C. The RFP provided that the selected developer for each project would be responsible for: \_\_\_\_\_.

D. The Development Partner submitted a response to the RFP on \_\_\_\_\_, 20\_\_, regarding Project #\_\_, described as \_\_\_\_\_. On \_\_\_\_\_, 20\_\_, the Development Partner submitted its best and final offer for the fee structure for the development. The Development Partner’s responses to the RFP are incorporated by reference as if fully set forth herein and made a part hereof.

E. On \_\_\_\_\_, 20\_\_, HACEP notified the Development Partner that the agency had selected the Development Partner to be the development partner for the Project.

F. The Parties hereto wish to establish basic terms to address the planning and predevelopment period, address expectations concerning implementation of the Project, and to authorize the Development Partner to begin work.

NOW, THEREFORE, for and in consideration of one dollar (\$1), and the mutual covenants and agreements herein contained, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**ARTICLE I. GENERAL TERMS; THE PROJECT.**

Section 1.01 Incorporation of Recitals. The recitals set forth above are incorporated by reference as if fully set forth herein and made a part hereof.



Section 1.02 Term of this Agreement. The term of this MOU shall commence on the Effective Date and expire upon Stabilized Occupancy (defined generally as 90% or greater physical occupancy, 80% or greater economic occupancy and a 1.20 debt service coverage, and application to TDHCA for IRS Forms 8609 or as described in the anticipated Investor Letter of Intent), unless extended by mutual written agreement of the Parties or terminated in accordance with Article VI herein (the “**Term**”). Certain responsibilities of the Development Partner and HACEP will continue after completion of conversion of the Project and the end of the Term as noted herein.

Section 1.03 The Project. The [Project Name] development project (the “**Project**”) will include \_\_\_\_\_ [building] consisting of \_\_\_ housing units (the “**Units**”) located \_\_\_\_\_. The legal description for the property upon which the Project will be constructed (the “**Property**”) is attached hereto at Exhibit A.

(a) The Project will [replace/renovate] \_\_\_\_\_ units located at \_\_\_\_\_ (collectively, the “**Existing Development**”).

(b) It is the Parties intent that the existing tenants will remain in place, to the extent feasible and practicable, in the Existing Development while the Project is constructed. Once the Project is complete, existing tenants will be offered the first opportunity to move into equivalent units in the Project. Alternatively, existing tenants will have the opportunity to move to an equivalent unit at an existing HACEP property. The Parties agree that a formal [Project Name] Relocation Plan will be developed for the tenants of the Existing Development consistent with this MOU.

Section 1.04 Owner Entity. \_\_\_\_\_, a \_\_\_\_\_, will be the owner entity for the Project (the “**Owner**”). \_\_\_\_\_, will be the general partner of the Owner with a 0.01% ownership interest (the “**General Partner**”). Paisano, an instrumentality of HACEP, will be the 100% member of the General Partner.

(a) The Parties contemplate jointly selecting an investment partner or partners for the Project (collectively, the “**Investment Partner**”). Upon selection, the General Partner and the Investment Partner will enter into a partnership agreement for the Owner (the “**Partnership Agreement**”).

(i) On behalf of HACEP, the Development Partner issued a Request for Proposal for Equity and/or Syndication for the Project on \_\_\_\_\_, 20\_\_.

(b) The Existing Development is currently owned by \_\_\_\_\_. HACEP entered into that certain Option Agreement for Purchase of Real Property executed on \_\_\_\_\_, 20\_\_ (the “**Option Agreement**”) regarding the Existing Development..

(c) HACEP is ground leasing the Property to the Owner pursuant to that certain Contract for Ground Lease dated \_\_\_\_\_, 20\_\_ (the “**Ground Lease**”). The Ground Lease is incorporated by reference as if fully set forth herein and made a part hereof.

Section 1.05 Financing. The Project will be financed using LIHTCs, traditional debt, and other funding to be identified by the Development Partner and approved by HACEP. As of the Effective Date, the Parties contemplate the following funding sources (collectively, the “**Project Financing**”):



(a) An award of [9%] LIHTCs from the Texas Department of Housing and Community Affairs (“**TDHCA**”) pursuant to that certain TDHCA Housing Tax Credit Commitment (the “**LIHTC Commitment**”) issued on \_\_\_\_\_, 20\_\_\_. A copy of the LIHTC Commitment is attached hereto at Exhibit B. The LIHTC Commitment provides for an annual tax credit commitment of \$\_\_\_\_\_.00.

(b) A gap loan provided by HACEP.

## **ARTICLE II. RELATIONSHIP OF THE PARTIES; DEVELOPMENT FEES; INDEMNIFICATIONS.**

Section 2.01 Purposes. The sole and exclusive purpose of this MOU is to define the understanding of the Parties with regards to the Project. The Parties agree to work together for the limited purposes and scope specifically set forth in this MOU. Except as specifically provided under the terms, provisions, and conditions herein, this MOU shall not be construed to constitute the Parties as partners or joint venturers or to constitute any Party as the general agent of the other Party by virtue of this MOU. No Party shall be responsible or liable to the other Party or to third parties for indebtedness or obligations of such other Party except as to those joint responsibilities incurred pursuant to this MOU or otherwise provided for herein.

Section 2.02 Not Responsible for Other's Commitments. Except as to those responsibilities, liabilities, debts, or obligations incurred or assumed pursuant to and which shall be performed and paid in accordance with the terms of this MOU, no Party shall be responsible or liable for any indebtedness or obligation of any other Party incurred or assumed either before or after the execution of this MOU, and each Party indemnifies and agrees to hold the other harmless from such indebtedness and obligations.

Section 2.03 Standard of Effort; Mutual Cooperation; Further Assurances. Each Party shall diligently and in good faith (i) undertake its responsibilities hereunder, (ii) cooperate fully with the other Party in all reasonable respects necessary to consummate such Party’s obligations hereunder and in support of such the Party’s obligations hereunder, and (iii) shall take all reasonable actions within its authority to secure the cooperation of its officials, officers, agents, and other third parties to consummate and support such obligations.

Section 2.04 Developer Fee. As of the Effective Date, the Parties expect a total developer fee of \_\_\_\_\_ percent (\_\_\_%) of eligible basis as determined by the TDHCA Cost Certification to be earned by the Project (the “**Total Development Fee**”). In consideration for the performance of its development services pursuant to the RFP and this MOU, the Parties have agreed to split the Total Development Fee as follows:

- \_\_\_\_\_% to Development Partner (“**Developer Fee**”)
- \_\_\_\_\_% to HACEP (“**HACEP Fee**”)

(a) Timing of Payment of Developer Fee. Prior to the date of the financial closing with the Investment Partner and any construction lender (the “**Closing**”), no Developer Fee will be paid to the Development Partner. It is the Parties intent assuming the approval of the LIHTC syndicator, that the Developer Fee will be paid out according to the following Developer Fee payout schedule:

- (i) 25% at financial closing;
- (ii) 25% at 50% construction completion;
- (iii) 25% at 100% construction completion;
- (iv) 20% at loan conversion;
- (v) 5% at stabilization/8609



(b) Timing of Payment of HACEP Fee. HACEP will have the option, at HACEP's sole discretion, to defer receiving payment of such portion of the HACEP Fee as HACEP deems appropriate in favor of decreasing the gap financing contemplated under Section 1.05(b) herein. It is the Parties intent that such deferred payments of the HACEP Fee will be paid back to HACEP within 15 years of the financial closing of the Project.

Section 2.05 Indemnification.

(a) Development Partner. The Development Partner shall indemnify, defend, and hold harmless HACEP and its respective commissioners, directors, officers, agents, employees, and affiliates hereunder from any loss, cost, damage, claim, demand, suit, liability, judgment, and expense (including reasonable attorney fees actually incurred and other costs of litigation) arising out of or relating to any injury, disease, or death of persons, or damage to or loss of property directly resulting from any material breach of this MOU or intentional wrongful acts by the Development Partner or its member entities, agents, partners, employees, contractors, and subcontractors, excluding however matters arising from conditions of the existing site not caused by the Development Partner or by its agents, partners, employees, contractors, or subcontractors.

(b) HACEP. To the extent permitted by law, HACEP (and any HACEP affiliate participating in the Project) shall indemnify, defend, and hold harmless the Development Partner and its respective directors, officers, agents, employees, and affiliates hereunder from any loss, cost, damage, claim, demand, suit, liability, judgment, and expense (including reasonable attorney fees actually incurred and other costs of litigation) arising out of or relating to any injury, disease, or death of persons, or damage to or loss of property directly resulting from any material breach of this MOU or intentional wrongful acts by HACEP or its member entities, agents, partners, employees, contractors, and subcontractors, excluding however matters arising from conditions of the existing site not caused by HACEP or by its member entities, agents, partners, employees, contractors, and subcontractors.

**ARTICLE III. DEVELOPMENT PARTNER ROLES AND RESPONSIBILITIES.**

The Development Partner will assist HACEP to redevelop the Project into high quality, energy efficient, and sustainable housing and will work closely with HACEP and other community stakeholders throughout the implementation of the Project to provide development and construction services in accordance with this MOU. The Development Partner shall perform the duties and undertake the responsibilities herein set forth in a competent, diligent, and professional manner. The Development Partner shall further exercise oversight to ensure that its affiliates and contractors perform all duties and responsibilities related to the Project in a competent, diligent, and professional manner.

The Development Partner's role in planning and implementation of the RAD conversion of the Project shall include:

Section 3.01 RAD Conversion Plan. No later than thirty (30) days from the Effective Date, the Development Partner shall propose an implementation plan to develop the Project that will achieve a high quality, energy efficient, sustainable housing product for El Paso families consistent with (a) the terms set forth in that certain Commitment to enter into a Housing Assistance Payment contract ("CHAP") issued by HUD for the Project and (b) El Paso's Housing Policy standards (the "**RAD Conversion Plan**"). The RAD



Conversion Plan shall include proposed scope of work, site plans, unit types, size and targeted income levels, the overall project budget including all proposed sources and uses of funds, conceptual design plans, and a detailed implementation schedule. The RAD Conversion Plan shall be subject to HACEP's approval, such approval to be granted or withheld in HACEP's reasonable discretion and will not be unreasonably delayed. Such plan must be supported by a detailed market study prepared by the Development Partner to determine the overall feasibility of the conceptual approach to the [Project Name] RAD Conversion. Included as Exhibit C to this MOU is a predevelopment budget (the "[Project Name] Predevelopment Budget") for the costs associated with the creation of the RAD Conversion Plan, including predevelopment costs incurred by HACEP prior to the Effective Date. The Development Partner will revise the [Project Name] Predevelopment Budget from time to time as new and updated pricing information is obtained. All revisions to the [Project Name] Predevelopment Budget will be subject to HACEP's review and approval. Such approval shall not be unreasonably withheld. Notwithstanding anything herein to the contrary, all such costs associated with the RAD Conversion Plan and proposed in the [Project Name] Predevelopment Budget will be split by HACEP and the Development Partner 50/50 and such costs will be reimbursed at the financial closing of the Project. To the extent that HACEP has already met its obligations towards fifty percent (50%) of the anticipated predevelopment costs prior to the Effective Date, HACEP will not be required to make further additional contributions to the Project for predevelopment activities.

Section 3.02 Financing. The Development Partner will propose to HACEP private equity and debt financing to leverage funds available for the Project and to secure all financial commitments for the costs (hard and soft costs) that will be necessary for successful conversion of the Project phase. The Development Partner shall assist in obtaining private financing and public financing in a timely and cost effective manner and shall prepare all necessary financing applications. As of the Effective Date, the Parties contemplate the Project Financing as set forth in Section 1.05 hereof.

(a) All financing arrangements and the terms and conditions of any loan documents must be approved by HACEP.

(b) The Development Partner agrees to work with HACEP in the preparation of documents necessary to provide all evidentiary material, financial guarantees, and assurances as required including documents necessary for the RAD Program.

(c) HACEP may provide Public Housing Capital Funds and Operating Reserves based upon the approved development/rehabilitation plan and development proposal.

(d) The Development Partner will be responsible for soliciting a minimum of 3 LIHTC syndicators to bid on LIHTCs allocated to or received for the Project. HACEP must approve the identity of the LIHTC investor(s) selected and the terms of the letter of intent. Only equity investors who agree to providing HACEP and Paisano an option/right of first refusal at the minimum price permitted by the Internal Revenue Code (the "Code") and who are amenable to structuring the transaction to minimize investor exit taxes due when HACEP or Paisano exercise the option/right of first refusal shall be considered as possible investors. In addition, a minimum of three debt providers will be solicited, and any debt and/or equity providers proposed by HACEP will be included in any solicitation.

(e) The Development Partner will be responsible for any market analysis and appraisals required to develop and obtain financing for the Project and shall include the costs for such market analysis and appraisals in the [Project Name] Predevelopment Budget.





Section 3.03 Design/Approvals/Construction.

(a) \_\_\_\_\_, a \_\_\_\_\_, shall serve as the general contractor (the “**General Contractor**”). Notwithstanding anything herewith to the contrary, the Parties intend the fees to the General Contractor be \_\_\_ percent (\_\_\_%) for general conditions, \_\_\_ percent (\_\_\_%) for builder overhead, and \_\_\_ percent (\_\_\_%) for profit to the extent permitted by lenders and investors.

(i) The Development Partner acknowledges and agrees that the terms and conditions of any such contract between the Development Partner and the General Contractor, including fees, shall comply with the requirements of all government funders (“**Government Funders**”), which the Parties anticipate to be TDHCA, the Federal Housing Administration (“**FHA**”), and HUD through the Project Based Rental Assistance Program, as well as the requirements of all private lenders and investors concerning construction-related fees and costs. To the extent that the Government Funders or private lenders and investors have specific requirements for identity-of-interest contractors, HACEP and the Development Partner shall comply with such requirements. In addition, HACEP and the Development Partner must use the contract form required by the applicable Government Funders and include all contract clauses required by any Government Funders.

(b) When selecting contractors not affiliated with the Development Partner (“**Third-Party Contractors**”), the Development Partner shall be alert to organizational conflicts of interest as well as noncompetitive practices that may restrict or eliminate competition or otherwise restrain trade. Awards shall be made to the bidder or offeror whose bid or offer is most advantageous to the Project, taking into consideration price, quality, and other factors deemed by the Development Partner and HACEP to be relevant. The Development Partner shall not recommend to HACEP any third party contractor which has been debarred by HUD and shall promptly terminate any contracts with any third party contractor that is subsequently debarred.

(i) All contracts entered into by the Development Partner or the General Contractor must be approved by HACEP prior to execution, which approval shall not be unreasonably withheld, delayed, or conditioned.

(ii) The Development Partner will oversee construction, ensure completion in a timely and cost effective manner, and ensure that all required occupancy permits, including certificates of occupancy, and other necessary approvals are obtained after construction completion for occupancy and operation.

(iii) The Development Partner shall be responsible for the development of design and construction documents utilizing design principles that are compatible with the neighborhood and community surrounding its properties. The Development Partner will comply with such design and construction standards as are prescribed by TDHCA. Determinations about the scope of the construction and the components and materials to be utilized in the construction, will comply with these standards. The design of the Project shall be subject to HACEP’s review, comment, and



approval, such approval not to be unreasonably withheld, conditioned or delayed.

- (iv) \_\_\_\_\_ shall serve as the project architect (the “**Project Architect**”) and shall report to and coordinate with Development Partner in such role. The Project Architect will be responsible for certification of all documents related to design and construction of the Project.
- (v) Except for HUD or TDHCA approvals, if any, the Development Partner will be responsible for obtaining permits and any required approvals for the Project.
- (vi) The Development Partner, the General Contractor, and all of its subcontractors will be required to pay Davis Bacon Wage Rates (“**DBWR**”) (see Exhibit D), to comply with all DBWR requirements, and to submit any/all required documentation in compliance with DBWR.

(c) HACEP shall coordinate with the City of El Paso to obtain a Resolution of No Objection for development of the Project.

Section 3.04 Resident/Local Employment and Contracting. The Development Partner will develop and implement a Section 3 Program (“**Section 3 Program**”) for the Project that will require the General Contractor and all subcontractors working on the Project to work with Section 3 Program business entities and provide economic opportunities for Section 3 Residents. The Development Partner shall:

(a) Develop a comprehensive Section 3 Program employment plan for the RAD Conversion Plan, which must be incorporated into the contract between the Development Partner and the General Contractor and all subcontracts entered into as part of the implementation of the RAD conversion.

(b) At the Development Partner’s sole expense, the Development Partner shall be responsible for the preparation and submittal to HACEP of all Section 3 Program requirements for reports to be provided to HUD. The Development Partner may delegate such Section 3 Program reporting responsibility to a designated consultant, provided that such consultant has been approved by HACEP and such consultant services will be at the Development Partner’s sole expense.

(c) In compliance with 24 C.F.R. § 135, the Development Partner will identify qualified individuals or businesses to meet the Section 3 requirement of thirty percent (30%) of new hires as a result of these solicitations by working with the Texas Work Force Commission, EPPC Contract Opportunity Center, Hispanic Chamber of Commerce, Small Business Administration office local contact, Coleen Burns, and other applicable agencies and entities.

(d) The Section 3 Clause attached at Exhibit E shall be included in the contract between the Development Partner and the General Contractor and all subcontracts entered into as part of the implementation of the RAD conversion.





Section 3.05 Guarantees. The Development Partner (including such additional entities that may be necessary to satisfy equity and/or lender requirements, if necessary (collectively with the Development Partner, the “**Guarantors**”)) will provide all investor and lender guarantees of construction completion, payment guarantees, and tax credit guarantees (the “**Guarantees**”) until Stabilized Occupancy or the withdrawal of the Development Partner from the Owner in a form and manner reasonably acceptable to the Guarantors.

Section 3.06 Marketing Plan. The Development Partner, if required by HACEP, will develop a lease-up strategy to obtain initial occupancy and to seek to maintain ongoing high occupancy of additional units (e.g., market rate units, LIHTC units).

#### **ARTICLE IV. HACEP AND PAISANO ROLES AND RESPONSIBILITIES.**

Section 4.01 Land Ownership/Lease. HACEP will continue to own the fee interest of the Project and will ground lease the land to the Owner. The Parties agree to work together to achieve the most beneficial property tax treatment for the Project at the cost of the Owner.

Section 4.02 Financing. HACEP will participate in all financial structuring decisions from an owner’s perspective including the review and approval of the financing arrangements, loan or equity commitments, investor-related documentation, and the terms and conditions of any loan documentation.

Section 4.03 Design/Approvals/Construction. HACEP will provide written approval of all design and development decisions, with such approval not to be unreasonably withheld, conditioned, or delayed.

Section 4.04 Monitor Resident/Local Employment and Contracting. HACEP will monitor the Development Partner’s compliance with Section 3 Program requirements including employment opportunities for low income residents located in the City of El Paso and contracting with Section 3 Program business entities.

Section 4.05 HUD Submissions and Approvals. HACEP will manage and take responsibility for all communication with HUD and timely prepare and submit all program documents and any other submittals that are required to obtain any HUD approval, provided, however, to the extent such documents require information that is within the particular knowledge or responsibility of the Development Partner, the Development Partner agrees to assist in the preparation of such documents as HACEP may reasonably request.

Section 4.06 Performance Oversight. HACEP will establish performance measures through the various project documents. HACEP will review performance on these measures throughout the Project conversion and the Development Partner shall be responsible for meeting any such performance measures that are in its control.

Section 4.07 Property Management. \_\_\_\_\_, a HACEP instrumentality, will be the property manager (“**Property Manager**”) for the Project and shall cooperate with HACEP and the Development Partner in the performance of the RAD conversion of the Project pursuant to a property management agreement (“**Property Management Agreement**”).



**Section 4.08 Resident Relocation.** The Property Management Agreement shall provide that the Property Manager will assist the Development Partner in the coordination of all resident relocation required to facilitate the construction and that:

(a) All resident relocation will be performed in accordance with the Uniform Relocation Act.

(b) The Property Manager will coordinate with the Development Partner and the General Contractor to ensure a sufficient number of units are available at all times to comply with the construction and renovation schedule approved by the Parties.

**Section 4.09 Guarantees.** Upon the Development Partner’s withdrawal from the Owner as described herein, Paisano or an affiliate of HACEP will provide any long term compliance guaranty required for the Project by TDHCA, the Investment Partner, or lenders, and indemnity to the Development Partner for any liability, if any, claimed against the Development Partner for matters that occur after the withdrawal of the Development Partner from the Owner. Paisano’s indemnity to the Development Partner, if any, shall be funded solely by non-federal funds.

**ARTICLE V. PROJECT REQUIREMENTS.**

**Section 5.01 Placed in Service.** Pursuant to the terms of the LIHTC Commitment and in accordance with Section 42(h)(1)(E)(i), the Project must be placed in service no later than \_\_\_\_\_, 20\_\_\_\_, or such other date as approved by TDHCA, provided that HACEP has authorized such requests to TDHCA for changes to the LIHTC Commitment or the attendant deadlines contemplated in the LIHTC award.

**Section 5.02 Set-Aside Requirements.** The RAD Units are subject to the following area median income (“AMI”) requirements:

Income Limit	Rent Limit	Number of Units
30% of AMI	30% of AMI	—
50% of AMI	50% of AMI	—
60% of AMI	60% of AMI	—

**Section 5.03 RAD Requirements.** The Project will be subject to the requirements of the RAD Program (the “**RAD Requirements**”), which include but are not limited to (1) the Consolidated and Further Continuing Appropriations Act of 2012, and all applicable statutes and any regulations issued by HUD for the RAD Program, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices (including but not limited to, Notice PIH 2012-32, as it may be amended from time to time), and Mortgagee letters (if any) for the RAD Program, and all future updates, changes, and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes, and amendments shall be applicable to the Project only to the extent that they interpret, clarify, and implement terms in the applicable closing documents rather than add or delete provisions from such document.

(a) The RAD Units will be benefited by the terms and conditions of a RAD Housing Assistance Payments (“**HAP**”) Contract. The Parties acknowledge that for so long as the RAD HAP Contract is in effect, the RAD Requirements apply to the Project.



**ARTICLE VI. TERMINATION; EVENTS OF DEFAULT; CURE PERIODS.**

Section 6.01 Termination of MOU. If the Parties are unable to reach agreement on the RAD Conversion Plan within the thirty (30) days provided for in Section 3.01 herein, which may be extended by written agreement signed by the Parties, then this MOU shall terminate and the Parties will have no responsibilities to each other. If this MOU terminates, HACEP agrees that it will reimburse the Development Partner for third party costs incurred and included in the HACEP-approved [Project Name] Predevelopment Budget provided that the third party contracts and work products must be assigned to HACEP before HACEP will reimburse for such third party costs. Each Party to this MOU shall be responsible for its own overhead costs and no reimbursement related to such costs shall be made to either party upon the termination of this MOU.

Section 6.02 Termination for Infeasibility. Either Party may terminate this MOU because the terminating Party concludes, after the exercise of reasonable due diligence, and having made commercially reasonable efforts, that the Project and/or the agreements contemplated in this MOU is/are infeasible (including, without limitation, a lack of success in securing adequate financing to meet the actual costs of the Project despite commercially reasonable efforts to do so). Upon termination of this MOU for infeasibility, the Development Partner shall, at HACEP's sole request, assign such third party contracts and work products to HACEP as HACEP chooses, provided that HACEP will reimburse the Development Partner for the associated third party costs. Except as provided for in this Section 6.02, neither party shall owe the other party any funds.

Section 6.03 Termination for Cause/Default.

(a) HACEP may terminate this MOU with cause, at any time, upon giving written notice to the Development Partner of the grounds asserted for such termination; provided that the grounds for termination are caused by the Development Partner's material failure to comply with the terms of this MOU and the Development Partner fails to cure such failure within sixty (60) days from receipt of such notice. If the grounds for termination are not susceptible to being cured with sixty (60) days, then HACEP will not unreasonably withhold its consent to such longer period as may be required to cure such material failure, provided that the Development Partner, following receipt of such notice, has promptly commenced and diligently and continuously pursues a cure.

(b) The Development Partner may terminate this MOU with cause, at any time, upon giving written notice to HACEP of the grounds asserted for such termination; provided that the grounds for termination are caused by HACEP's material failure to comply with the terms of this MOU and HACEP fails to cure such failure within sixty (60) days from receipt of such notice. If the grounds for termination are not susceptible to being cured within sixty (60) days, then the Development Partner will not unreasonably withhold its consent to such longer period as may be required to cure such material failure, provided that HACEP, following receipt of such notice, has promptly commenced and diligently and continuously pursues a cure.

(c) Upon termination hereof for cause by either HACEP or the Development Partner, the other Party shall have all remedies available at law or in equity.

Section 6.04 Termination Upon Event of Default. HACEP or Paisano may terminate this MOU upon an Event of Default by the Development Partner and the Development Partner may terminate this MOU upon an Event of Default by HACEP or Paisano.



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(a) Events of Default. The occurrence of any of the following shall constitute an Event of Default under this MOU after all notice and cure periods provided herein:

- (i) Refusal or failure of a Party to diligently carry out its material obligations hereunder with the diligence that will insure its completion within the time specified in this MOU, or failure to satisfy said obligations within the time specified;
- (ii) If any representation of such Party under this MOU or the Development Partner's to the RFP is or becomes untrue or inaccurate in any material respect;
- (iii) The Development Partner or the General Contractor is debarred by the Federal government or the State of Texas;
- (iv) Either Party (i) being or becoming insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee, or liquidator for any substantial part of its property, (ii) a bankruptcy, winding up, reorganization, insolvency, arrangement, or similar proceeding instituted by such party under the laws of any jurisdiction, or any such proceeding instituted against such party under the laws of any jurisdiction that has not been stayed or dismissed within ninety (90) days after its institution, (iii) any action or answer by such party approving or, consenting to, or acquiescing in, any such proceeding, or (iv) the levy of any distress, execution, or attachment upon the property of such party that shall substantially interfere with its performance hereunder; or
- (v) There is a material change in the ownership of the Development Partner that has not been disclosed to and approved by HACEP.

(b) Cure Period; Remedy Upon Default. Upon the occurrence of an Event of Default, the non-defaulting Party may give written notice thereof to the defaulting Party. If the defaulting Party shall fail to cure the default within thirty (30) days of such notice, or such additional time as may be necessary provided that the defaulting Party has commenced to cure such default within such thirty (30) day period and thereafter prosecutes such cure to completion, then the non-defaulting Party may, by written notice, terminate the right to proceed with the Project. In no event under this MOU will either Party be entitled to any special, consequential, lost opportunity, or lost profits damages as a remedy in the event of the other Party's default.

Section 6.05 Termination for Convenience. HACEP may terminate this MOU in whole, or in part, whenever HACEP determines, in good faith, that such termination is in the best interest of HACEP. Any such termination shall be effected by written notice to the Development Partner specifying the extent to which the performance hereunder is terminated, and the date upon which such termination becomes effective. If this MOU is terminated, either in whole or in part, HACEP shall be liable to the Development Partner for reasonable and proper costs resulting from such termination which costs shall be paid to the Development Partner within thirty (30) days of receipt by HACEP of a properly documented and presented claim setting out in detail: (a) total cost of all third-party costs incurred to date of termination, provided such costs are consistent with the applicable HACEP-approved budget, less the total amount of reimbursements previously made to the



Development Partner; (b) the cost of settling and paying claims (including reasonable profit) under subcontracts and material orders for work performed and materials and supplies delivered to the Project site, payment for which has not been made by HACEP to the Development Partner; (c) the cost of preserving and protecting the work already performed until HACEP or its assignee takes possession thereof or assumes responsibility for such work.

## ARTICLE VII. MISCELLANEOUS PROVISIONS.

### Section 7.01 Compliance with HUD Requirements.

(a) Treatment of HUD Funds. Any transfer of public housing funds pursuant to this MOU will not be an assignment of public housing funds or be deemed an assignment of public housing funds. The Development Partner will not succeed to any rights or benefits HACEP may have under the applicable grant agreements or contracts with HUD or attain any privilege, authority, interest, or right under applicable grant agreements or contracts between HACEP and HUD. Nothing contained in this MOU will be construed to create any relationship of third party beneficiary or otherwise with HUD.

(b) Source of Funds. The Development Partner acknowledges and agrees that HACEP shall, in its sole discretion, have the right but not the obligation to make available RAD Program funds to the Project and that acceptance of such RAD Program funds would require the Development Partner, the General Contractor, and all subcontractors to the Project to comply with HUD's requirements for the RAD Program.

(c) Environmental Review. The Development Partner acknowledges that because the Project has applied for RAD Program funds, the Development Partner will comply with all applicable HUD environmental review requirements, including those at 24 C.F.R. Part 50. Without limiting the foregoing, until the Project has received the necessary environmental approvals from HUD or HACEP, and until the Development Partner receives written confirmation regarding such approvals, the Development Partner will not take any action or otherwise spend any federal or non-federal funds with respect to the Project, except that the Development Partner and the General Contractor may expend funds to conduct routine title, survey, and other due diligence that will not have an adverse environmental impact with respect to the Project. The Development Partner understands that if the Development Partner takes any other action or spends any other funds, regardless of their source, with respect to the Project before receiving the necessary environmental approvals, such action may be cause for termination of this MOU.

(d) Development Obligations. The Development Partner shall provide development services in accordance with this MOU. The Development Partner shall perform the duties and undertake the responsibilities herein set forth in a competent and professional manner using good faith reasonable efforts. The Development Partner is an independent contractor and not an agent of HACEP. Therefore, except as may be expressly set forth herein, the Development Partner shall have no authority to bind HACEP. Except as expressly set forth herein, the Development Partner will provide all services, equipment, and materials for the Project and will furnish, directly or through contractors or subcontractors, professional expertise, management, labor, materials, supplies, fixtures, equipment, tools and machinery, testing, supervision, facilities, and other services required for the completion of the Project.

(e) Compliance with Laws and other Requirements. The Development Partner shall fully comply with all applicable laws and regulations applicable to the Development Partner, including but not limited to with respect to workers' compensation, social security, unemployment insurance, hours of labor, wages, working conditions, licensing and other employer-employee related matters, including, without limitation, all laws, rules and regulations with respect to non-discrimination based on race, sex or otherwise,



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and MBE/WBE, and Section 3 of the Housing and Urban Redevelopment Act of 1968. The Development Partner will further comply with all applicable public housing or RAD requirements.

Section 7.02 Notices. Any notice required or permitted under this MOU shall, except as otherwise expressly permitted by this MOU, be in writing and shall be deemed to have been duly given on the date of receipt, and shall be either served personally on the party to whom notice is to be given or mailed to the party to whom notice is to be given by recognized overnight commercial courier or first class registered or certified mail, return receipt requested, postage prepaid, and addressed to the addressee at the address stated opposite its name below, or at the most recent address specified by written notice given to the other party in the manner provided in this Article. As a matter of convenience, but not a requirement, the sending party where possible also will transmit to the other party a copy of the communication by fax, if available to the parties. Notices concerning emergency situations may be orally communicated in person or by telephone, or sent by either hand delivery or telegraphic, teleprinter, e-mail or tele-typewriter service, but shall be promptly confirmed by supplemental written notice as provided herein.

Notice to HACEP:

Housing Authority of the City of El Paso

5300 E. Paisano Drive

El Paso, TX 79905

Attn: Gerald Cichon

(915) 849-3702

asaenz@hacep.org

With a copy to:

Reno & Cavanaugh, PLLC

455 Massachusetts Avenue, NW Suite 400

Washington, DC 20001

Attn: Megan Glasheen

(202) 349-2470

mglasheen@renocavanaugh.com

Notice to Paisano:

Paisano Housing Redevelopment Corporation

5300 E. Paisano Drive

El Paso, TX 79905

Attn: Gerald Cichon

(915) 849-3702

asaenz@hacep.org





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Notice to Development Partner: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_  
(\_\_\_\_) \_\_\_\_-\_\_\_\_  
\_\_\_\_@\_\_\_\_\_

With a copy to: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_  
(\_\_\_\_) \_\_\_\_-\_\_\_\_  
\_\_\_\_@\_\_\_\_\_

Section 7.03 Avoidance of Conflicts of Interest. No commissioner, member, officer, or employee of HACEP, no member of the governing body of the locality in which the Project is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project location shall, during his or her tenure, and for one year thereafter or such longer time as HACEP's policies may require, have any interest, direct or indirect, in this MOU or the proceeds thereof, unless the conflict of interest is waived by HACEP and by HUD. In addition, the Development Partner shall not solicit or hire any current HACEP employees with responsibilities for the administration of the Project, whether as an employee or consultant, during the Term and one year thereafter.

Section 7.04 Amendment. This MOU may not be amended, modified, or altered except by written instrument duly executed by the Parties.

Section 7.05 Assignment. The Development Partner shall not assign its rights or delegate its duties under this MOU without the prior written consent of HACEP. All of the terms, provisions, covenants, conditions, and obligations of this MOU shall be binding on, and inure to, the benefit of any such assignee.

Section 7.06 Merger. The Parties acknowledge and agree that all prior discussions, negotiations, letters of intent, and any other writings by and between the parties shall be deemed to be superseded and replaced by the terms of this MOU, and of no force or effect.

Section 7.07 Entire Agreement. This MOU contains the entire agreement of the Parties with respect to the subject matter of this MOU, and shall be deemed to supersede all prior agreements, whether written or oral; and the terms and provisions of any such prior agreement shall be deemed to have been merged into this MOU.



Section 7.08 Governing Law. This MOU shall in all respects be governed and construed in accordance with the laws of the State of Texas including all matters of construction, validity, and performance. The venue of any court proceeding to interpret or enforce the provisions of this MOU shall be Texas.

Section 7.09 Multiple Counterparts. This MOU may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this MOU or the terms hereof to produce or account for more than one of such counterparts provided that the counterpart produced bears the signature of the party sought to be bound.

Section 7.10 Severability. In the event that any provision of this MOU shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the parties hereto shall negotiate in good faith to agree to such amendments, modifications, or supplements of or to this MOU and take such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this MOU shall, as so amended, modified, or supplemented or otherwise affected by such action, remain in full force and effect.

Section 7.11 Waiver. The waiver by any party hereto of its rights arising out of, or in connection with an Event of Default or other breach, failure, or default under this MOU by any other party hereto shall not operate or be construed to operate as a waiver of any subsequent Event of Default, breach, failure, or default.

Section 7.12 Exhibits Incorporated by Reference. The following Exhibits are hereby incorporated by reference and expressly made a part hereof:

- (a) Exhibit A – Legal Description
- (b) Exhibit B – \_\_\_\_\_, 20\_\_ LIHTC Commitment
- (c) Exhibit C – [Project Name] Predevelopment Budget
- (d) Exhibit D – Davis Bacon Wage Rates
- (e) Exhibit E – HACEP Section 3 Policy

[Signatures Begin on Next Page]





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EXECUTED as of the Effective Date.

HOUSING AUTHORITY OF THE CITY OF EL PASO

By:

---

Name:

---

Title:

---

PAISANO HOUSING REDEVELOPMENT CORPORATION

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

---

Name:

---

Title:

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# Housing Authority of the City of El Paso

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

---

Name:

---

Title:

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EXHIBIT MOU A

LEGAL DESCRIPTION

[INSERT]



RFP: RAD 17-R-0021

DEVELOPER SERVICES II

EXHIBIT MOU B

LIHTC COMMITMENT

[ATTACH]



RFP: RAD 17-R-0021

DEVELOPER SERVICES II

EXHIBIT MOU C

[PROJECT NAME] PREDEVELOPMENT BUDGET

[ATTACH]



RFP: RAD 17-R-0021

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EXHIBIT MOU D

DAVIS BACON WAGE RATES

[ATTACH]



EXHIBIT MOU E

SECTION 3 CLAUSE

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

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

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

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

(d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

(e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

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



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## EXHIBIT E

### Standard Form of Agreement Between Owner and Contractor

#### Guaranteed Maximum Price

This STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR GUARANTEED MAXIMUM PRICE (the “**Agreement**”) made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, BETWEEN the Owner: \_\_\_\_\_ 5300 E. Paisano, El Paso, Texas 79905, and the Contractor: Affordable Housing Enterprises, a Texas non-profit corporation, 5300 E. Paisano, El Paso, Texas 79905 for the following Project:

(Name, location and detailed description)

A. The Project and details are as set forth more fully in the Project Manual for Construction Services for the \_\_\_\_\_ Communities Renovations, and related documents for Solicitation Number CSP: RAD \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_, as modified, before becoming final, and in accordance with the award of said solicitation (the “**Project Manual**”).

B. The Architect for the Project is \_\_\_\_\_ Name, legal status, address and other information)

## AGREEMENT

The Owner and Contractor agree as follows:

### ARTICLE 1 GENERAL INFORMATION

The Contractor shall provide all site, building exterior and interior work to be performed in accordance with the contract documents, prepared by the Architect. All Work (as hereinafter defined) shall be performed in accordance with all applicable building and construction codes, UFAS/ANSI and TDHCA requirements. The Work shall include demolition, renovations, and new construction at the Project, which includes, without limitation, site upgrades (on selected landscape), irrigation, playgrounds and open spaces, on-site ponding, select site utilities upgrades, driveways and parking and dumpster pad repairs/replacements, street paving, curb and gutter, striping, site signage and lighting), roof repairs/replacement, termite treatment, asbestos, mold and lead paint abatement/encapsulation, all interior finishes for walls, ceilings, and floors. Also included are new plumbing (sewer, water and gas), mechanical, power, internet, cable and lighting upgrades, as well as kitchen and bathroom upgrades. Replacement of window, doors and hardware, and repair to existing damaged finishes as described in the Construction Documents.

Based on the information provided by the Contractor through the selection process, the Contractor and their proposed staff have represented that they possess certain relevant experience and capabilities to deliver the Work at a stated level of performance with regard to this Project type. The Owner is depending on the Contractor to perform at or above the level represented during the selection process. The Contractor accepts





the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and best professional judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Contractor shall perform its operations in an open book collaborative process during the Project, including Work performed through the General Conditions costs. An open book approach requires the Contractor to make available to the Owner, in detail, all correspondence, estimates, documentation and transactions related to the Project, in a timely manner in accordance with this Agreement. All of the Contractor's subcontractors and material suppliers shall price all Change Orders in an Open Book manner, even those subcontracts awarded on a lump sum basis. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor, to the extent available to the Owner, and to make payments to the Contractor in accordance with the requirements of the Contract Documents. Owner acknowledges and agrees, in advance, that Contractor will enter a Prime Subcontract with a third party, and that such third party shall, in accordance with the Prime Subcontract, undertake all of the obligations and duties of Contractor set forth in the Contract Documents, and the named Contractor shall act as on behalf of Owner for purposes of the Prime Subcontract.

## **ARTICLE 2**

### **THE CONTRACT DOCUMENTS**

The Contract Documents consist of: this Agreement; Conditions of the Contract (General, Supplementary and other Conditions); Drawings; Specifications; Addenda issued prior to execution of this Agreement; other documents listed in this Agreement (including, without limitation the Project Manual); and Modifications of Contract (as that term is defined in the General Conditions of the Contract for Construction for the Project of even date herewith, which accompanies this Agreement) issued after execution of this Agreement; all of which are a part of the Contract Documents, and are as fully a part of the Contract Documents as if attached to this Agreement or repeated herein. A listing of the Contract Documents, other than a Modification of Contract subsequently issued, appears in Article 10 below.

The Contract Documents represent the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

All references to the General Conditions of the Contract for Construction shall refer to and shall mean the General Conditions of the Contract for Construction for the Project, as modified by Owner, and incorporated herein by this reference. The term "Contractor" as used the General Conditions, shall mean the Contractor named herein, and shall extend to that third party who undertakes the role of Contractor in accordance with the Prime Subcontract.

## **ARTICLE 3**

### **THE WORK UNDER THE CONTRACT DOCUMENTS**

The Contractor shall fully execute the Work described in the Contract Documents and as reasonably inferable therefrom, except as specifically indicated in the Contract Documents to be the direct responsibility of others. Notwithstanding anything in the Contract Documents to the contrary, Contractor represents and warrants that it is familiar with the Contract Documents, the Project site, and the requirements for the construction activities set forth in Article 1 and called for by the Contract Documents and acknowledges that Owner is relying upon the expertise of Contractor that the Project will be completed by the Completion Date for the Contract Sum, as set forth herein.



**ARTICLE 4**

**DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

4.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a Notice to Proceed issued by the Owner.

<b>Project</b>	<b>Tentative Date of commencement</b>	<b>Days from Notice to Proceed</b>
_____	_____	_____

A separate written “**Notice to Proceed**” shall be issued to Contractor for each community which comprises a portion of the Project. If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner’s shall so state in the related Notice to Proceed.

4.2 The Contract Time shall be measured from the date of commencement, as established in the Notice to Proceed.

4.3 The Contractor shall achieve Substantial Completion of the Work (by Project) as follows:

<b>Project</b>	<b>Date of commencement</b>	<b>Date of Substantial Completion</b>
_____	_____	_____

In all events, the Work must be completed by \_\_\_\_\_, the “Required Completion Date”.

The foregoing dates are subject to adjustments of this Contract Time as provided in the Contract Documents. For purposes of the Contract Documents, the Date of Substantial Completion and the Required Completion Date refer to the same day, unless the blank for Required Completion Date provides a different date.

4.4 **Liquidated Damages.** If for any reason the Contractor does not timely attain: (1) Substantial Completion on or before the Required Completion Date, as modified by Modification of Agreement or as otherwise extended as set forth in the Contract Documents; or (2) obtain certificates of occupancy prior to the applicable Required Completion Date; then the Contractor shall pay to the Owner, as liquidated damages, the sum of \_\_\_\_\_ Dollars and No Cents (\$\_\_\_\_.00) per day, per apartment unit for each day between the date certificates of occupancy are actually issues (the “Actual Completion Date”) and the date of Substantial Completion, as determined by the issuance of a final certificate of occupancy for such community. The Owner may deduct any amount of liquidated damages due from the Contractor to the Owner from amounts to be paid to Contractor under this Agreement. Owner and Contractor recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner due to Contractor's failure to achieve Substantial Completion by the applicable Required Completion Date are difficult if not impracticable to determine with certainty. Therefore, Owner and Contractor agree that the amount of damages described above shall be liquidated damages to the Owner; provided, nothing herein shall limit Owner’s damages or recovery due to Contractor's other breach(es) under the Contract Documents.



**ARTICLE 5**

**CONTRACT SUM**

5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum, subject to additions and deductions as provided in the Contract Documents, including this Agreement. The "Contract Sum" is the Cost of Work as set forth in the award for Solicitation Number RAD \_\_\_\_\_, which is (\$ \_\_\_\_\_) plus the Contractor's Fee which is \_\_\_\_\_.

5.1.1 The Contractor's Fee shall be calculated as a percent of the reimbursable Cost of the Work, including, without limitation, Allowances and General Conditions costs, and shall be allocated and paid in the same proportion as the Cost of Work is paid hereunder. The Contractor's Fee is the entire Fee the Contractor shall receive for this Project for Construction Services. The Contractor shall not include the Contractor's Fee or administrative mark-ups directly within hourly billing rates, rental rates, on insurance, bond premiums, or on permit fees.

5.1.2 The method of adjustment of the Contractor's Fee for changes in the Work is as follows:

5.1.2.1 The Contractor's Fee on Modification of Contract approved by the Owner in writing shall be increased for additive change orders, based upon the allocation of the Contractor's Fee to the Cost of work as set forth in Section 5.1.1 above; and for deductive change orders shall be reduced in the same proportion as the Cost of Work as set forth in Section 5.1.1.

5.1.2.2 Contractor's Fee on Self-Performed Work awarded through the competitive bidding process will be governed and adjusted on a percentage basis in the manner set forth in Section 5.1.1.

5.1.2.3 Contractor's Fee on Contractor's Contingency when such Contingency is moved to individual line items in a Modification of Contract approved by the Owner will be governed by and at the same Fee rate as set forth in Section 5.1.1.

5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

5.1.3.1 The maximum allowable mark-up for Change Orders or Modification of Contract by or involving Subcontractors for work or self-performed work shall be the same percentage for the Contractor's Fee as set forth in Section 5.1.1. Overhead and profit mark-up shall include: a) warranty, safety, and small tools, b) all home office costs, c) estimating and change order preparation costs, d) incidental job burdens, e) legal costs, f) data processing costs, g) rental expenses for temporary facilities, and h) all other indirect costs.

5.1.3.2 The maximum allowable mark-up for Change Orders or Modification of Contract by or involving sub-subcontractors for Work performed or self-performed Work shall be as set forth in Section 5.1.1. Overhead and profit mark-up shall include: a) warranty, safety, and small tools, b) all home office costs, c) estimating and change order preparation costs, d) incidental job burdens, e) legal costs, f) data processing costs, g) rental expenses for temporary facilities, and h) all other indirect costs.



5.1.4 Rental rates for Contractor-owned equipment shall not exceed the standard industry rates paid by the Contractor at the place of the Project.

5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit
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5.2 GUARANTEED MAXIMUM PRICE

5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00), subject to additions and deductions by Modification of Contract as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the “Guaranteed Maximum Price”. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner. All savings remaining between the actual final Contract Sum and the Guaranteed Maximum Price shall revert one hundred percent (100%) to the Owner.

5.2.2 The Guaranteed Maximum Price is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

5.2.3 Unit prices, if any:

(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)

5.2.4 Allowances included in the Contract Sum Guaranteed Maximum Price, if any:

(Identify allowance and state exclusions, if any, from the allowance price.)

5.2.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

(Identify any assumptions upon which then GMP is based – which, if incorrect, could result in consequences to completing the Work within the Cost of the Work and Contract Time as set forth in this Agreement.

5.2.6 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Modification of Contract.



5.2.7 In preparing the Contractor's Guaranteed Maximum Price proposal, the Contractor may include as a Modification of Contract, a sum which is designated as a Contractor's Construction Contingency for the Contractor's exclusive use to cover costs arising under Section 5.2.5, and other unanticipated costs which are properly considered reimbursable as a Cost of the Work but do not form the basis for a Modification of Contract as a result of changes in the Scope of Work. The Contingency funds shall not include the Contractor's Fee, which shall be added to the Contingency to reach the Guaranteed Maximum Price. The allocation of funds to the Contractor's Construction Contingency shall not increase the Guaranteed Maximum Price.

5.2.7.1 The Contractor shall report and reconcile the Contractor's Construction Contingency to the Owner on a monthly basis. Contractor's Contingency will be allocated to specific line items in the Estimate through the use of a Modification of Contract signed by the Owner and Contractor, including a description of the items covered by the Contractor's written request to use funds from the Contractor's Construction Contingency.

5.2.7.2 The Owner shall not unreasonably withhold approval of a written request to utilize the Contractor's Construction Contingency so long as: (a) the Contingency amount accessed does not cause the Guaranteed Maximum Price to be exceeded; (b) the Contractor utilizes the Contractor's Construction Contingency for items required for the Project that are recoverable as Costs of the Work under the Contract Documents, but do not justify an increase in the Guaranteed Maximum Price; and (c) the Contractor's Contingency is used for any items outlined in clauses (1) through (3) as follows:

(1) The scope of Work that is unclear, incomplete or conflicting on the Contract Documents but is Work consistent with the Contract Documents and reasonably inferable as being necessary to produce the intended results for a complete Project;

(2) Is used as additional resources necessary to recover lost time. If overtime is required to maintain the schedule, the Contractor shall obtain the Owner's prior written approval before moving forward with such overtime; or

(3) Delays caused by market, labor, material or transportation conditions, labor disputes, normal weather or other causes which are costs of the Work but do not justify an increase in the Guaranteed Maximum Price.

5.2.7.3 The Contractor's Contingency is not available for use by the Contractor for mistakes of subcontractors, sub-subcontractors or material suppliers, or any warranty work.

5.2.7.4 The Contractor's Contingency is not available for use by the Owner for allowance overruns, changes in the Scope of Work, differing or changed site conditions.

5.2.7.5 At Final Completion of the Project, any unused portion of the Contractor's Contingency remaining in the Guaranteed Maximum Price will be returned, credited, or otherwise paid one hundred percent (100%) to the Owner.

5.3 OWNER'S CONTINGENCY. The parties have agreed to establish, an Owner's contingency, which is not included in the Contract Sum, in the not-to-exceed amount of: \_\_\_\_\_ and No One Hundredths Dollars (\$\_\_\_\_,000.00) for the "Owner's Contingency". The purpose of the Owner's Contingency is to efficiently and timely address any unknown or unanticipated cost or expenses not specified in the Contract Documents that may be required as a result of unforeseen circumstances, or additional Work as a result of a change of the scope of the Work; and which are otherwise reimbursable without duplication as a Cost of the Work. The Owner's Contingency is not a replacement or substitute for the costs or expenses which are properly allocable to the Cost of Work which was



or is a part of the Contract Documents and which should or could have been properly included as a part of the Contractor's bid submission and the Contract Sum (stipulated sum) in connection with the Project. Contractor has no entitlement to any portion of the Owner's Contingency.

Contractor acknowledges and agrees that any Work which is to be charged against the Owner's Contingency that does not receive such prior written approval from the Owner shall be deemed to be part of Contractor's basic Work compensated within the Contract Sum (stipulated sum) and not chargeable against the Owner's Contingency. The Contractor shall not proceed with any Work which the Contractor believes is allocable to the Owner's Contingency until authorized in writing through the issuance of a Modification of Contract.

Any expenditure from or allocable to the Owner's Contingency, may only be made or allocated after the prior written approval and authorization of Owner. The Owner reserves the right, in its sole and absolute discretion, to withhold consent on expenditures of the Owner's Contingency. Upon obtaining the written approval of Owner, the Owner shall issue a Modification of Contract reflecting the amount and purpose of the use of all or a portion of the Owner's Contingency. Once issued, such Modification of Contract becomes a part of the Contract Documents incorporated by reference herein.

After completion of the Work and acceptance of the Project by the Owner, any unexpended funds from the Owner's Contingency shall be retained by or if advanced returned to the Owner.

## **ARTICLE 6**

### **CHANGES IN THE WORK**

6.1 The Owner may, without invalidating this Agreement or the Contract Documents, order changes in the Work within the general scope of this Agreement or the Contract Documents consisting of additions, deletions, or other revisions. The Owner shall issue such changes in a written Modification of Contract. The Owner and not the Architect may make minor changes in the Work as provided in Section 7.4 of the General Conditions of the Contract for Construction, which is a part of the Contract Documents, with such changes being effectuated through a written Modification of Contract issued by Owner. The Contractor may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work, provided the Modification of Contract has a substantive impact on the critical path of the approved Project Schedule, which is a part of the Contract Documents. Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Article 7 of the General Conditions of the Contract for Construction, as amended by Owner.

6.2 In calculating adjustments to subcontracts, the terms "cost" and "fee" as used in Section 7.3.3.3 of the General Conditions of the Contract for Construction, and the term "costs" as used in Section 7.3.7 of the General Conditions of the Contract for Construction. Subcontract and purchase orders adjustments shall not be made without either a guaranteed maximum price or a fixed price. Subcontract and material supplier Change Orders or Modifications of Contract shall be subject to Audit under Article 11 notwithstanding that the Work or supplies associated therewith may have been awarded initially on a "lump sum" basis.

6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of the General Conditions of the Contract for Construction, shall mean the Cost of the Work as defined in Article 7 of this Agreement, each and the term "fee" shall mean the Contractor's Fee as defined in Section 5.1 of this Agreement.





6.4 If the extent of such changes are such, in the aggregate, that application of the adjustment provisions of Article 5 will cause substantial inequity to the Owner and/or Contractor acknowledge, the Contractor's Fee shall be equitably adjusted on the same basis that was used to establish the Contractor's Fee for the original Work, and agree that the Guaranteed Maximum Price shall be adjusted accordingly, by a Modification of Contract issued by Owner.

## **ARTICLE 7**

### **COSTS TO BE REIMBURSED**

#### **7.1 COST OF THE WORK**

7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

7.1.2 Where any cost is subject to the Owner's prior approval, the Contractor shall obtain this approval prior to incurring the cost. The parties shall identify any such costs prior to executing this Agreement.

#### **7.2 WAGES AND SALARIES**

7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

7.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

7.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Contractor or paid to any Subcontractor, supplier, or vendor.

7.3 **SUBCONTRACT COSTS.** Subcontract costs are payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

7.4 **COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION**



7.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

**7.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS**

7.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the Project site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value of that portion actually consumed at the Project site in furtherance of the Work.

7.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site. Costs of transportation, installation, minor repairs, maintenance, dismantling and removal of such rented equipment are reimbursable Cost of the Work but must be itemized separately from the rental costs. The total rental cost of any Contractor-owned item may not exceed the purchase price of any comparable item. Rates of Contractor-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

7.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior written approval.

**7.6 MISCELLANEOUS COSTS**

7.6.1 The actual cost of premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Agreement, and self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work, which are not exempt under the Owner's tax exemption, and for which the Contractor is liable.

7.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay to undertake the Work (but not Contractor's license(s) required for Contractor to generally engage in the business that Contractor does.





7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of General Conditions of the Contract for Construction, or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 General Conditions of the Contract for Construction, or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

7.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

7.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

7.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

7.6.9 Subject to the Owner's prior approval, expenses incurred temporary living expenses of the Contractor's personnel required for the Work which have been included in the approved General Conditions Estimate.

7.6.10 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties directly related to the Work. Travel expenses must comply with the Owner's Policy regarding Contractor Business-Related Travel Expenses, and must be approved in writing by the Owner prior to the expense being incurred. Payment for Business-Related Travel Expenses shall be reimbursed at actual costs without mark-ups. Travel expenses for the Contractor's Executives and Officers will not be reimbursed under any circumstances. Commuting to and from the job site will only be reimbursed if it is in accordance with Internal Revenue Service rules and regulations.

## 7.7 OTHER COSTS AND EMERGENCIES

7.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

7.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of General Conditions of the Contract for Construction.

7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.



## 7.8 RELATED PARTY TRANSACTIONS

7.8.1 For purposes of Section 7.8, the term “related party” shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent (10%) in the aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term “related party” includes any member of the immediate family of any person identified above.

7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction, the Contractor shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Article 10.

7.8.3 The Contractor will be allowed to perform Work directly with labor performed by its own forces or employees (“Self-Performed Work”) to complete General Conditions of the Contract for Construction requirements, or to provide fill-in work to complete gaps in the scope of the Work performed by Subcontractors. If the Contractor is qualified to perform certain Work, the Contractor may be allowed to perform such Work upon written request to the Owner and with the written approval of the Owner. However, the Contractor (a) will not be permitted to and limited to charging: (A) overhead at \_\_\_ percent (\_\_\_%)Contractor to please propose percentage as part of response to RFP] of such increase; and (B) profit of \_\_\_ percent (\_\_\_%).Contractor to please propose percentage as part of response to RFP] Contractor shall submit a competitive bid for Self-Performed Work for the Owner’s prior written approval. Contractor will receive only the Contractor’s Fee identified in Section 5.1.1 on all labor, materials, subcontractors or equipment identified in the Cost of the Work. The Contractor will not be permitted to add additional administrative or supervisory staff to the Project to manage Self-Performed Work.

## ARTICLE 8

### COSTS NOT TO BE REIMBURSED

8.1 The Cost of the Work shall not include the items listed below:

8.1.1 Salaries and other compensation of the Contractor’s Executives or other personnel stationed at the Contractor’s principal office or offices other than the site office, except as specifically provided in Section 7.2. or as may be provided in this Agreement;

8.1.2 Expenses of the Contractor’s principal office and offices other than the site office;

8.1.3 Overhead and general expenses, except as may be expressly included in Article 7;

8.1.4 The Contractor’s capital expenses, including interest on the Contractor’s capital employed for the Work;



8.1.5 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure of the Contractor, Subcontractors, sub-subcontractor, and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the this Agreement or the Contract Documents;

8.1.6 Any cost not specifically and expressly described in Article 7;

8.1.7 Costs associated with establishing a local presence or in the development of an association with a local firm;

8.1.8 Expenses incurred for relocation allowances of the Contractor's personnel required for the Work;

8.1.9 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Contractor or paid to any Subcontractor or vendor; and

8.1.10 Costs, other than costs included in Change Orders approved by the Owner that would cause the Guaranteed Maximum Price to be exceeded.

## **ARTICLE 9**

### **DISCOUNTS, REBATES AND REFUNDS**

9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if: (1) before making the payment, the Contractor included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

## **ARTICLE 10**

### **SUBCONTRACTS AND OTHER AGREEMENTS**

10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Owner and Architect. The Owner shall then determine, with the advice of the Contractor and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection. The Owner's determination hereunder shall not relieve the Contractor of its obligation under the Contract Documents.

10.2 After the Guaranteed Maximum Price has been approved, when a specific bidder (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a



Modification of Contract be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

10.3 Subcontracts, purchase orders, or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded without a Guaranteed Maximum Price or a fixed price without the prior written consent of the Owner. In all Subcontracts and purchase orders, whether awarded on a guaranteed maximum price basis, fixed price, or on a cost-plus a fee basis, the Contractor shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11, below.

10.4 The Work to be performed under this Agreement and the related Contract Documents is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u (Section 3). The purpose of opportunities generated by HUD assistance of 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. Further information regarding Section 3 requirements is set forth in Section D of the RFP. Each of Contractor, and all Sub-contractors and lower tier contractors will be required to satisfy the Section 3 requirements set forth in the RFP.

## **ARTICLE 11**

### **ACCOUNTING RECORDS**

11.1 The Contractor shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Agreement and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Agreement. The Contractor shall preserve these records for a period of three (3) years after final payment, or for such longer period as may be required by law.

11.2 Equipment purchased and charged to the Project as a Cost of the Work shall become the property of the Owner. Any lease/purchase rental arrangements must be disclosed to the Owner in a timely manner. If the Contractor purchases equipment under a lease/purchase arrangement whereby rental payments are charged to Owner as a Cost of the Work, an appropriate credit shall be given to the Owner for the fair market value of the equipment at the time it was last used on the Project, should the Owner deem it appropriate to keep or retain such items. For Contractor-owned equipment, the Contractor shall maintain written daily equipment usage reports. The equipment use reports shall be used by the Contractor to determine the most economical billing rate (hourly, weekly, monthly) to the Owner.

## **ARTICLE 12**

### **PAYMENTS**

#### **12.1 PROGRESS PAYMENTS**



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12.1.1 Based upon Applications for Payment submitted to the Architect and Owner by the Contractor and Certificates for Payment issued by the Owner, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

12.1.2 The period covered by each Application for Payment shall be one (1) calendar month ending on the last day of the month.

12.1.3 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. The Work associated with each payment shall be subject to inspection and verification by Owner. Upon completion of inspection and satisfaction of verification, Owner shall, within thirty (30) calendar days of verification, issue payment to Contractor under this Agreement. Owner's verification prior to payment shall not act as final acceptance of the Work or otherwise relieve Contractor or any subcontractor of its respective obligation to perform under the Contract Documents.

12.1.4 Payments are due and payable as provided in this Section. Amounts unpaid forty six (46) days after the date as determined in this Section shall bear interest at the rate of two and one half percent (2.5%) per annum, or the rate required by the Texas Prompt Payment Act then in effect of different.

12.1.5 With each Application for Payment, the Contractor shall submit a payroll form acceptable to Owner, lien waivers in accordance with Section 9.3.3 of General Conditions of the Contract for Construction, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

12.1.6 Each Application for Payment shall be based on the most recent Owner approved schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate line item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner or Architect may require. This schedule, when approved by the Architect and the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

12.1.7 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

12.1.8 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

(1) Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of the General Conditions of the Contract for Construction;



(2) Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

(3) Add the Contractor's Fee, less retainage in accordance with Section 12.1.8(4) below. The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

(4) Owner shall retain up to ten percent (10%) of the completed Cost of the Work including Contractor's Fee until the Work is fifty percent (50%) completed. Thereafter, at the Owner's sole discretion, if the Work is proceeding to the satisfaction of the Owner, retainage may be prorated. The Owner reserves the right to determine whether to release retainage on early performing subcontracts upon written request of the Contractor, if the subcontracted Work is acceptable to the Owner.

(5) Subtract the aggregate of previous payments made by the Owner;

(6) Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.5 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

(7) Subtract amounts, if any, for which the Architect or Owner has withheld or nullified a Certificate for Payment as provided in Section 9.5 of General Conditions of the Contract for Construction.

12.1.9 The Owner, based upon recommendations from the Contractor, shall implement a (1) procedure for review and approval of payments to Subcontractors; and (2) the percentage of retainage held on Subcontracts in accordance with Section 12.1.8(4), and the Contractor shall execute subcontracts in accordance with those agreements.

12.1.10 In taking action on the Contractor's Applications for Payment, the Owner and the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that either or both of the Owner or the Architect has made a detailed examination, audit, or arithmetic verification of the documentation submitted in accordance with this Agreement or other supporting data; that the Owner and Architect have made exhaustive or continuous on-site inspections; or that the Owner and Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications will be performed by the Owner's auditors acting in the sole interest of the Owner, and cannot be relied upon by Contractor, any subcontractor, sub-subcontractor, supplier, or vendor.

## 12.2 FINAL PAYMENT

12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:





(1) the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of the General Conditions of the Contract for Construction, and to satisfy other requirements, if any, which extend beyond final payment;

(2) the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment;

(3) a final Certificate for Payment has been issued by the Architect and accepted by Owner in the same manner as Applications for Payment in this Agreement; and

(4) Owner is in possession of all lien waivers and/or releases, together with any other required documentation, as provided in the Contract Documents.

12.2.2 The Owner's auditors will review and report in writing on the Contractor's final accounting within thirty (30) days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 12.2.1 have been met, the Owner will, within seven (7) days after receipt of the written report of the Owner's auditors, either issue to the Contractor a final Certificate for Payment with a copy to the Architect, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the General Conditions of the Contract for Construction. The time periods stated in this Section 12.2.2 supersede those stated in Section 9.4.1 of the General Conditions of the Contract for Construction. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

12.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of General Conditions of the Contract for Construction. A request for mediation shall be made by the Contractor within thirty (30) days after the Contractor's receipt of a copy of the Owner's response to the final Certificate for Payment. Failure to request mediation within this thirty (30) day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Owner's final Certificate for Payment, in the same manner as provided in Section 7.3.9 of the General Conditions of the Contract for Construction.

12.2.4 The Owner's final payment to the Contractor shall be made no later than forty five (45) days after the issuance of the Owner's final Certificate for Payment.

12.2.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work for which the Contractor is entitled to compensation under the Contract Documents, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price.



**ARTICLE 13**

**DISPUTE RESOLUTION**

13.1 INITIAL DECISION MAKER. The Owner's Representative will serve as Initial Decision Maker pursuant to Section 15.2 of the General Conditions of the Contract for Construction, as modified by Owner, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

The Initial Decision Maker for the Owner shall be Gerald W. Cichon, unless another person is so named, and notice thereof is provided to the Contractor in accordance with the terms of the Contract Documents.

13.2 BINDING DISPUTE RESOLUTION. For any Claim subject to, but not resolved by, or mediation pursuant to Section 15.3 of the General Conditions of the Contract for Construction, as modified , as the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- Arbitration pursuant to Section 15.4 of the General Conditions of the Contract for Construction
- Litigation in a court of competent jurisdiction
- Other (Specify)

Any claim, dispute, or controversy (whether in contract, tort or otherwise, whether preexisting, present or future, and including, without limitation, statutory, common law, intentional tort and equitable claims) arising from, or relating to, the transactions contemplated in this Agreement; the interpretation or application of this Agreement; or the breach, termination or validity thereof, the relationships which result from this Agreement (including, to the full extent permitted by applicable law, relationships with third parties who are not signatories hereto) (collectively, a "Dispute") WILL BE RESOLVED, EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION. The Arbitration shall be conducted pursuant to the Rules of the American Arbitration Association in accordance with its Construction Industry Arbitration Rules. None of the parties will have the right to litigate a Dispute in court or to have a jury trial regarding a Dispute or to engage in pre-arbitration discovery, except as provided for in the applicable arbitration rules, by mutual agreement of the parties involved, or as permitted under applicable law for preserving Disputes that may be subject to a statute of limitations defense, or for the maintenance of the status quo pending determination by the applicable arbitration tribunal. Further, Construction Manager, and anyone claiming by or through Construction Manager, will not have the right to participate as a representative or member of any class of claimants pertaining to any Dispute, but instead shall submit such Dispute to binding arbitration in accordance with the terms of this Section and Sections 171.044 through 171.055, and Sections 171.081 through 171.097 of the Texas Civil Practice and Remedies Code, or successor provisions of Texas law thereto, (the "Rules") currently in effect as of the date this Agreement is entered. The arbitration shall be conducted in El Paso, Texas, by a single arbitrator who is in good standing and licensed to practice law in the State of Texas and has not less than fifteen (15) years' experience in commercial real estate transactions. Any court having jurisdiction may enter judgment on the award rendered by the arbitrator(s). Each party involved will bear its own cost of any legal representation,





discovery, or research required to complete arbitration, but may be reimbursed for same as a part of the arbitration award. The existence or results of any arbitration will be treated as confidential.

## ARTICLE 14

### TERMINATION OR SUSPENSION

14.1 Subject to the provisions of Section 14.2 below, this Agreement may be terminated by the Owner or the Contractor as provided in Article 14 of General Conditions of the Contract for Construction.

14.2 If the Owner terminates this Agreement for cause as provided in Article 14 General Conditions of the Contract for Construction, the amount, if any, to be paid to the Contractor under Section 14.2.4 of General Conditions of the Contract for Construction, as amended by Owner, shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- (1) Take the Cost of the Work incurred by the Contractor to the date of termination;
- (2) Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1;
- (3) Subtract the aggregate of previous payments made by the Owner; and
- (4) Subtract the reasonable amount to be accessed as liquidated damages, to the extent such termination could result in the Contract Time to extend past the Required Completion Date.

14.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.2. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

14.4 The Work may be suspended by the Owner as provided in Article 14 of General Conditions of the Contract for Construction; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of General Conditions of the Contract for Construction, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Sections 5.1.1 and Section 6.4 of this Agreement.

14.5 The Work may be suspended by the Owner as provided in Article 14 of the General Conditions of the Contract for Construction, as modified by Owner.

## ARTICLE 15

### MISCELLANEOUS PROVISIONS



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15.1 Where reference is made in this Agreement to a provision of the General Conditions of the Contract for Construction or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

15.2 The Owner's representative is Gerald W. Cichon. John Irvin, Director of Design and Construction, shall serve as the Field Representative of Owner and initial contact with regards to matters to be decided by and addressed by Owner under this Agreement or the Contract Documents. Each of these persons are located at the office and address of the Owner. As to matters to be decided by and addressed by Owner under this Agreement or the Contract Documents. Each of these persons are located at the office and address of the Owner. Owner may, from time to time, replace or appoint others to act as Owner's representative, by providing notice thereof to Contactor in accordance with the terms and provisions of the Contract Documents. The Owner reserves the right to assign all or a portion of its obligations under this Agreement to a developer or other consultant who will work with Owner and Contractor in effectuating the Project.

15.3 The Contractor's representative is Gerald W. Cichon, whose address is C/O Affordable Housing Enterprises, 5300 E. Paisano, El Paso, Texas 79905.

15.4 Neither the Owner's nor the Contractor's representative shall be changed without ten (10) calendar days written notice to the other party.

15.5 Other provisions. The Work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u (Section 3). The purpose of opportunities generated by HUD assistance of 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. Further information regarding the Section 3 requirements is set forth in the Section 2 Specifications Clause, which is a part of the Project Manual.

15.6 Contractor is performing the services under this Agreement as an independent contractor and not as an employee, agent, partner, or joint venturer with the Owner. It is understood and agreed that each Contractor and subcontractor, together with their respective agents, servants, and employees, it is at all times acting as an independent contractor, and that neither has any express or implied authority to assume or create any obligation or responsibility on behalf of, or in the name of, the other party. Contractor shall satisfy all tax and other governmentally-imposed responsibilities with regard to its own personnel, including, without limitation, payment of social security taxes, workers' compensation, self-employment taxes, and all other payroll taxes.

An independent contractor is not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by the Contractor or some other entity. An independent contractor is not entitled to worker's compensation benefits. An independent contractor is obligated to pay federal and state income tax on any monies earned pursuant to this contract relationship.

15.7 In connection with the performance of Work under this Agreement, the Contractor agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation, against any person otherwise qualified on the basis of race, color, religion, national origin, gender, age military status, sexual orientation, marital status or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts related to the performance of this Agreement and the Contract Documents.



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15.8 Contractor certifies that Contractor shall comply with the provisions of CRS §8-17.5-101, et. seq., including, without limitation, the following:

15.8.1 Contractor does not now, and shall not knowingly employ or contract with an illegal alien to perform work under this Agreement for services, nor will Contractor enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Agreement.

15.8.2 Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement for services using either the E-Verify Program jointly administered by the Social Security Administration, or the Department of Homeland Security [[http://www.dhs.gov/files/programs/gc\\_1185221678150.shtm](http://www.dhs.gov/files/programs/gc_1185221678150.shtm)].

15.8.3 Contractor is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

15.8.4 If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contract with an illegal alien, Contractor shall:

(A) Notify the subcontractor and Owner within three (3) days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(B) Terminate the subcontract with the subcontractor within three (3) days after notice the subcontractor does not stop employing or contracting with the illegal alien; except that termination of the subcontract is not required if the subcontractor provides information establishing that the subcontractor has not knowingly employed or contracted with an illegal alien.

15.8.5 Contractor agrees to comply with any reasonable request made by the Texas Department of Labor and Employment in the course of an investigation by the Department.

15.8.6 A violation of this Section 15.8 by Contractor will be considered a material breach of this Agreement and Owner may, at its option, terminate this Agreement and the Contractor shall be liable for actual and consequential damages to Owner.

15.9 The person or persons signing and executing this Agreement on behalf of each party, do hereby warrant and guarantee that he/she or they have been fully authorized by such party to execute this Agreement on behalf of such party and to validly and legally bind such party to all terms, performances and provisions set forth in this Agreement and the Contract Documents.

15.10 In the event any provision of this Agreement is rendered invalid or unenforceable by law, or declared void by any court of any competent jurisdiction, the remainder of the provisions of this Agreement shall remain in full force and effect.

15.11 This Agreement may be executed in any number of counterparts, each of which may be deemed an original, and all of which taken together shall constitute one and the same agreement. Executed copies hereof may be delivered by electronic mail, portable document format, image or facsimile and, upon, receipt, shall be deemed originals and binding upon the parties hereto. Without limiting or otherwise affecting the validity of executed copies hereof that have been delivered by electronic mail, portable document format, image, or facsimile, the parties will use commercially reasonable efforts to deliver originals as promptly as possible after execution. Signature pages may be detached and reattached to physically form one document.



**ARTICLE 16**

**ENUMERATION OF CONTRACT DOCUMENTS**

16.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

16.1.1 The Agreement is this executed agreement, Standard Form of Agreement Between Owner and Contractor – Stipulated Sum;

16.1.2 The General Conditions of the Contract for Construction.

16.1.3 The Supplementary and other Conditions of the Contract as set forth in the Project Manual.

16.1.4 The Specifications: (Either list the Specifications here or refer to an exhibit attached to this Agreement.)

**Refer to the Project Manual**

Section	Title	Date	Page(s)
_____	_____	_____	_____

16.1.5 The Drawings: (Either list the Drawings here or refer to an exhibit attached to this Agreement.)

**Refer to the Project Manual**

Number	Title	Date
_____	_____	_____

16.1.6 The Addenda, if any:

Number	Date	Page(s)
_____	_____	_____

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 10.

16.1.7 Additional documents, if any, forming part of the Contract Documents:



- 16.1.7.1 Project Manual for CSP: RAD \_\_\_\_\_-\_\_\_\_-\_\_\_\_\_;
- 16.1.7.2 Instructions to Bidders for Contracts for CSP: RAD \_\_\_\_\_-\_\_\_\_-\_\_\_\_\_, including, without limitation the Supplementary Instructions to Bidders, all of which are set forth in the Project Manual;
- 16.1.7.3 Bid Form for CSP: RAD \_\_\_\_\_-\_\_\_\_-\_\_\_\_\_ set forth in the Project Manual;
- 16.1.7.4 Procurement Documents Bid Sheet for CSP: RAD \_\_\_\_\_-\_\_\_\_-\_\_\_\_\_ set forth in the Project Manual;
- 16.1.7.5 Form of Bid Bond for CSP: RAD \_\_\_\_\_-\_\_\_\_-\_\_\_\_\_ set forth in the Project Manual;
- 16.1.7.6 Development Procedures Manual for the Housing Authority of the City of El Paso and its development affiliates, the present version of which is Version 3.0, adopted August 3, 2016;
- 16.1.7.7 Prime Subcontract for the Project between Contractor and \_\_\_\_\_, dated as of the date of this Agreement, together with the documents incorporated therein by reference;
- 16.1.7.8 Certification as to Corporate Principal for CSP: RAD \_\_\_\_\_-\_\_\_\_-\_\_\_\_\_ set forth in the Project Manual;
- 16.1.7.9 U.S. Department of Housing and Urban Development Office of Public and Indian Housing Representations, Certifications, and Other Statements of Bidders;
- 16.1.7.10 U.S. Department of Housing and Urban Development Office of Public and Indian Housing – Certification of Bidder Regarding Equal Employment Opportunity;
- 16.1.7.11 Section 3 Specifications Clause for CSP: RAD \_\_\_\_\_-\_\_\_\_-\_\_\_\_\_ set forth in the Project Manual;
- 16.1.7.12 Preference for Section 3 Business Concerns in Contracting Opportunities for CSP: RAD \_\_\_\_\_-\_\_\_\_-\_\_\_\_\_ set forth in the Project Manual;
- 16.1.7.13 Form of Non-Collusive Affidavit Prime Bidder for CSP: RAD \_\_\_\_\_-\_\_\_\_-\_\_\_\_\_ set forth in the Project Manual;
- 16.1.7.14 Texas Statutory Performance Bond for CSP: RAD \_\_\_\_\_-\_\_\_\_-\_\_\_\_\_ set forth in the Project Manual;
- 16.1.7.15 Payment Bond for CSP: RAD \_\_\_\_\_-\_\_\_\_-\_\_\_\_\_ set forth in the Project Manual;
- 16.1.7.16 U.S. Department of Housing and Urban Development Certification by Proposed Subcontractor Regarding Equal Employment Opportunity;



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16.1.7.17 Subcontractor Identification for CSP: RAD \_\_\_\_\_ - \_\_\_\_ - \_\_\_\_\_ set forth in the Project Manual;

16.1.7.18 Certification for Business Concerns Seeking Section 3 Preference in Contracting and Demonstration of Capability for CSP: RAD \_\_\_\_\_ - \_\_\_\_ - \_\_\_\_\_ set forth in the Project Manual;

16.1.7.19 Contractor's Qualification Statement for CSP: RAD \_\_\_\_\_ - \_\_\_\_ - \_\_\_\_\_ set forth in the Project Manual;

16.1.7.20 Davis Bacon Wage Rates for CSP: RAD \_\_\_\_\_ - \_\_\_\_ - \_\_\_\_\_ set forth in the Project Manual;

16.1.7.21 Construction Services for the \_\_\_\_\_ Communities Renovations;

16.1.7.22 Evaluation Criteria for Price Proposal for CSP: RAD \_\_\_\_\_ - \_\_\_\_ - \_\_\_\_\_ set forth in the Project Manual;

16.1.7.23 Prime Subcontract between Contractor, Prime Subcontractor and Owner;

16.1.7.24 General Conditions of the Contract for Construction, as amended by Owner;

16.1.7.25 Texas Statutory Conditional Lien Release; and

16.1.7.26 Texas Statutory Complete Lien Release.



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**ARTICLE 17**  
**INSURANCE AND BONDS**

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of the General Conditions of the Contract for Construction, as modified by Owner.

Type of Insurance or Bond

Limit of Liability or Bond Amount

The insurance and bonding requirements are as set forth in the Project Manual. See Project Manual



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

**OWNER:**

\_\_\_\_\_

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**CONTRACTOR:**

**AFFORDABLE HOUSING ENTERPRISES**

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

Name: Gerald W. Cichon

Its: Chief Executive Officer

EXHIBIT F

**GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION**





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**Project:**

**Owner:**

\_\_\_\_\_, LP

5300 E. Paisano Drive

El Paso, Texas 79905

**Architect:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ARTICLE 1**

**GENERAL PROVISIONS**

**1.1 BASIC DEFINITIONS.**

1.1.1 THE CONTRACT DOCUMENTS. Precedence of the Contract Documents is as follows: The Agreement between Owner and Contractor (hereinafter the "Agreement"), Conditions of the Contract (General, Supplementary and other Conditions), the Project Manual, Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement (including, without limitation, the Project Manual), and Modifications or Modifications of Contract issued after execution of the Contract. A "Modification of Contract" includes: (1) a written amendment to the Contract signed by both parties, (2) a Change Order approved by Owner, (3) a Construction Change Directive issued by Owner, or (4) a written order for a minor change in the Work issued by the Owner, as each of those terms (1), (2), (3) and (4) are typically used in construction contracts. Unless specifically enumerated in these General Conditions or the Project Manual or incorporated therein by reference, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instruction to Bidders, sample forms, the Contractor's bid which is not included in the final Contract Documents or portions of Addenda relating to bidding requirements).

1.1.3 THE WORK. The term "Work" means the demolition, construction, and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

1.1.4 THE PROJECT. The Project is comprised of the undertakings described in the Project Manual and under the Contract Documents by the Contractor and others, and may be the whole or a part be undertaken by the Owner or by separate contractors.



1.1.5 THE DRAWINGS. The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

1.1.6 THE SPECIFICATIONS. The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

1.1.7 INSTRUMENTS OF SERVICE. The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract, and Specifications. It includes the Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor, and any Prime Subcontractor, may each retain one record set of the Instruments of Service. Neither the Contractor nor any Subcontractor, Sub-subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors of them and have transferred and assigned to Owner all common law, statutory and other reserved rights, in addition to the copyrights associated therewith. All copies of Instruments of Service, except the Contractor's (and Prime Subcontractor's) record sets, shall be returned or suitably accounted for to the Architect and Owner, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor (and Prime Subcontractor) are for use solely with respect to this Project. They are not be used by the Contractor, the Prime Subcontractor, or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner. The Contractor, Prime Subcontractor, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights held by Owner.

1.1.8 INITIAL DECISION MAKER. The Initial Decision Maker is the person identified in this Agreement to render initial decisions on Claims in accordance with Section 15.2 hereof, and certify termination of the Agreement under Section 14.2.2.

## 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS.

1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of the Work to be performed by any trade.



1.2.3 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.3 **CAPITALIZATION.** Terms capitalized in these General Conditions include those which are (1) specifically defined, and (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document, or (3) the titles of other documents which are a part of the Contract Documents.

1.4 **INTERPRETATION.** In the interest of brevity the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

1.5 **EXECUTION OF CONTRACT DOCUMENTS.** The Contract Documents shall be signed by the Owner, Contractor, and where appropriate, the Architect. If any of Owner, Contractor or Architect, do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request, and the parties shall promptly execute same.

1.6 **TRANSMISSION OF DATA IN DIGITAL FORM.** If the parties intent to transmit Instruments of Service or any other information or documentation relating to the Project in digital form they shall endeavor to establish necessary protocols governing such transmissions, unless already provided in the Agreement, or the Contract Documents. Such protocols may include, without limitation, electronic formats, confidentiality controls, and systems. In connection with electronic deliveries, Owner and Contractor agree that Contractor shall obtain, maintain, and make available to Owner and Prime Contractor all reports and data using the PROCORE construction management contract software, or an agreed upon equivalent.

## **ARTICLE 2**

### **OWNER**

#### **2.1 GENERAL.**

2.1.1 The Owner is the person or entity identified as such in this Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner’s approval or authorization. Except as otherwise provided in Subparagraph 4.2.1 below, the Architect does not have such authority to make decisions on behalf of Owner. The term “Owner” means the Owner or the Owner’s authorized representative.

2.1.2 The Owner shall furnish to the Contractor within fifteen (15) days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic’s lien rights, to the extent such rights are not waived or limited by the Contract Documents. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner’s interest therein. Contractor acknowledges that any such lien rights shall be limited by the Contract Documents and further limited by applicable law.

#### **2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**



2.2.1 The Owner shall, at the written request of Contractor prior to commencement of the Work, provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if: (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor. Contractor acknowledges and agrees that Contractor may be provided written agreements from Owner's lender(s) in connection with the financing of the project, which may include without limitation, acknowledgement of collateral assignment of the Contract Documents to such lender(s) and an agreement of Contractor to perform in the event that such lender(s) demand continued performance in exchange for such Lender assuming in whole or in part the obligations of Owner under the Contract Documents. Contractor shall execute from time to time such documents as are reasonably requested by Owner's lender(s) to effectuate such collateral assignments of the Contract Documents.

2.2.2 Except for permits and fees, including those required under Subparagraph 3.7.1 below, which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

2.2.3 The Owner, directly or through Architect, shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner, provided such reliance is reasonable based upon Contractor's inspection and review of the Project site, and Contractor shall exercise proper precautions relating to the safe performance of the Work, and reporting to Owner inconsistencies that are observed by Contractor in accordance with the terms of this Agreement.

2.2.4 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control and required of Owner shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

2.3 **OWNER'S RIGHT TO STOP THE WORK.** If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated or the parties have agreed as to how to address any such issues; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3. Additionally, any stoppage of Work in accordance with this Paragraph, shall not permit Contractor to additional compensation or a change in Contract Sum or Contract Time.

2.4 **OWNER'S RIGHT TO CARRY OUT THE WORK.** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence



and promptness, the Owner may after such seven (7) day period give the Contractor a second written notice to correct such deficiencies within a three (3) day period. If the Contractor within such three (3) day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner within ten (10) days after demand from Owner.

### **ARTICLE 3 CONTRACTOR**

#### **3.1 GENERAL.**

3.1.1 The Contractor is the person or entity identified as such in this Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative. The Contractor shall designate an authorized representative who shall have express authority to bind contractor with respect to this Contract.

3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

#### **3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR.**

3.2.1 Execution of the Contract by the Contractor is a representation that prior to the execution and delivery of this Agreement, the Contractor visited the Project site, became generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully: study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3; shall take field measurements of any existing conditions related to that portion of the Work; and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and to assist in discovering errors, omissions, or inconsistencies in the Contract Documents. The Contractor shall promptly report, as a request for information in such form as the Architect may require, to the Owner and Architect any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a result of Contractor's activities set forth in this Subparagraph. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities,



but the Contractor shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Contractor as a request for information to Architect in such form as the Architect may require.

3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Subparagraphs 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Subparagraphs 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Subparagraph 3.2.1 or 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies, or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized or should have recognized such error, inconsistency, omission or difference and failed to report it to the Architect and Owner.

### 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES.

3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, safety, quality, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Contractor shall be solely responsible for any resulting loss or damage.

3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors, and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### 3.4 LABOR AND MATERIALS.

3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, clean-up, vehicles, dumpsters, SWPPP, mobilization and demobilization, barricades, traffic control devices, first aid kits, safety program administration and training, fire protection, and other facilities (office trailers etc.) and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4.2 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Modification of Contract.

3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Owner may, in writing, require Contractor to remove from the Project any of Contractor's or its Subcontractor's employees whom Owner finds to be careless,





incompetent, unsafe, uncooperative, disruptive, or otherwise objectionable. Additionally, Owner may, but is under no obligation, to require in writing that Contractor relieve or replace any subcontractor, sub-subcontractor, or any other person who is not qualified or otherwise permitted to work on the Project as provided under the Contract Documents.

3.5 **WARRANTY REGARDING WORK.** The Contractor warrants to the Owner and Architect: that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents; that the Work will be free from defects not inherent in the quality required or permitted; and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect or the Contract Documents, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.6 **TAXES.** Except where a valid tax exemption certificate or a qualified substitute therefore is provided to the Contractor, the Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

3.7 **PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS.**

3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution and completion and completion of the Work which are customarily secured after execution of the Contract Documents and which are legally required when bids are received or negotiations concluded.

3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.

3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents or requirements of the Work are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification of Contract. If the Contractor performs Work knowing it to be contrary to laws, ordinances, building codes, and rules and regulations without such written notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction thereof.

3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are: (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents; or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents or the Project, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed, and in no event later than twenty one (21) days after first observance of the conditions. The Architect and Owner, as applicable, will promptly investigate such conditions and, if the Architect or Owner determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect or Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents and



that no change in the terms of the Contract is justified, and the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons and basis thereof, provided however, the Architect's reasoning, bases, or conclusions relating thereto shall not be binding on Owner or Contractor. If any party disputes the Architect's reasoning or recommendation, such party may proceed as provided in Article 15 below.

3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites, or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### 3.8 ALLOWANCES.

3.8.1 The Contractor shall include in (and by commencing Work acknowledges that) the Contract Sum contains all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents:

3.8.2.1 allowances shall cover the cost of the Contractor of materials and equipment delivered at the site, less applicable trade discounts;

3.8.2.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the allowances; and

3.8.2.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Modification of Contract. The amount of the Modification of Contract shall reflect (1) the difference between actual costs and the allowances under Clause 3.8.2.1 and (2) changes in Contractor's costs under Clause 3.8.2.2, and an adjustment of fee in accordance with the Contract Documents.

3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

### 3.9 SUPERINTENDENT.

3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner the name and qualifications of a proposed superintendent. The Owner may reply within fourteen (14) days to the Contractor in writing stating (1) whether the Owner has reasonable objection to the proposed superintendent or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the fourteen (14) day period shall constitute notice of no reasonable objection.





3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. This provision shall not impact the Owner's rights under Paragraph 3.4.3.

### 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES.

3.10.1 Contractor shall submit, to Owner and Architect, the initial Work Progress Schedule for the Work in relation to the entire Project not later than twenty-one (21) calendar days after the effective date of the Notice to Proceed issued by Owner to Contractor. Unless otherwise indicated in the Contract Documents, the Work Progress Schedule shall be computerized Critical Path Method (CPM) with fully editable logic, and shall be made available to Owner and its designees in electronic form, in addition to any other format so requested. This initial Work Progress Schedule shall indicate the dates for starting and completing the various aspects required to complete the Work, including mobilization, procurement, installation, testing, and inspection, delivery of Close-out Documents and acceptance of all the Work of the Contract. When acceptable to Owner, the initially accepted Work Progress Schedule shall be the "Baseline Schedule" for comparison to actual conditions throughout the Contract duration. This subparagraph pertains to construction phase schedules. Additional requirements for design phase scheduling for Construction Manager-at-Risk and Design-Build contracts are outlined in Division 1 Project Planning and Scheduling Specifications of the Project Manual.

3.10.1.1 Contractor shall submit electronic and paper copies of the initial Work Progress Schedule reflecting accurate and reliable representations of the planned progress of the Work, the Work to date if any, and of Contractor's actual plans for its completion. Contractor shall organize and provide adequate detail so the Work Progress Schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities.

3.10.1.2 Contractor shall re-submit initial Work Progress Schedule as required to address review comments from Owner, Architect, and any designated engineer until such schedule is accepted by Owner as the Baseline Schedule.

3.10.1.3 The Contractor's submittal of a Work Progress Schedule, schedule revision, or schedule update constitutes Contractor's representation to Owner of the accurate depiction of all progress to date and that Contractor will follow the schedule as submitted in performing the Work.

3.10.1.4 Contractor shall update the Work Progress Schedule monthly, as a minimum, to reflect progress to date and current plans for completing the Work, while maintaining a separate original schedule as Baseline Schedule. Contractor shall submit both paper and electronic copies of the updates to the Owner, Architect, and any designated engineer as directed by Owner, and in all cases, an updated Work Progress Schedule shall be provided concurrently with each Application for Payment. Owner has no duty to make progress payments unless accompanied by the updated Work Progress Schedule reflecting activity through the cutoff date in such Application of Payment. Work Progress Schedule updates shall show the anticipated date of completion reflecting all extensions of time granted through Modification of Contract or otherwise as of the date of the update. Contractor may revise the Work Progress Schedule when in Contractor's judgment it becomes necessary for the management of the Work. Contractor shall identify all proposed changes to schedule logic to Owner, Architect, and any designated engineer via an executive summary narrative accompanying the updated Work Progress Schedule for review prior to final implementation of revisions into an updated Baseline Schedule, once approved and agreed upon by Owner. Schedule changes that materially impact Owner's operations shall be communicated promptly to Owner and shall not be incorporated or become



a part of the revised Baseline Schedule without Owner's advanced written approval, which may be withheld in Owner's sole and absolute discretion.

3.10.1.5 The Work Progress Schedule is for Contractor's use in managing the Work. Submittal of the Work Progress Schedule, and successive updates or revisions, is for the information of Owner and to demonstrate that Contractor has complied with requirements for planning the Work. Owner's express acceptance of an updated or revised Work Progress Schedule, constitutes Owner's agreement to coordinate its own activities with Contractor's activities as shown on such Work Progress Schedule.

3.10.1.6 Receipt of a Work Progress Schedule, or update and/or revision thereto does not indicate any approval of Contractor's proposed sequences and duration by or on behalf of Owner.

3.10.1.7 Receipt of a Work Progress Schedule update or revision indicating early or late completion does not constitute Owner's consent, alter the terms of the Contract, or waive either Contractor's responsibility for timely completion or Owner's right to damages for Contractor's failure to do so.

3.10.1.8 Contractor's scheduled dates for completion of any activity or the entire Work, as provided in a Work Progress Schedule, do not constitute a change in terms of the Contract. Modifications of Contract are the only method of modifying the Substantial Completion Date(s) and Contract Time.

3.10.2 The Contractor shall prepare and keep current, for the Architect and Owner's review and Owner approval, a schedule of submittals which is coordinated with the Contractor's Work Progress Schedule and allows the Architect and Owner reasonable time to review submittals and to submit same to Owner's personnel for review.

3.10.3 The Contractor shall perform the Work in general accordance with the most recent Work Progress Schedule and related submittals delivered to Owner and Architect.

3.11 **DOCUMENTS AND SAMPLES AT THE SITE.** The Contractor shall maintain at the site for the Owner one (1) record copy of the Drawings, Specifications, Addenda, and Modifications of Agreement, in good order and marked currently to record field changes and selections made during construction, and one (1) record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and Owner, and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.

3.12 **SHOP DRAWINGS, PRODUCT DATA AND SAMPLES.**

3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

3.12.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents, unless expressly designated as such in the Project Manual or a Contract Document. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design

concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Subparagraph 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect or Owner without action.

3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect and Owner, Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed and approved by Contractor for compliance with the Contract Documents may be returned by the Architect or Owner without action.

3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has: (1) reviewed and approved them; (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect and Owner.

3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect and Owner's approval of Shop Drawings, Product Data, Samples or similar submittals, unless the Contractor has specifically informed the Architect and Owner in writing of specifically indicating such deviation at the time of submittal, and (1) the Owner has given written approval to the specific deviation; or (2) a Modification of Contract has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect and Owner's approval thereof.

3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect or Owner on previous submittals. In the absence of such written notice, the Architect and Owner's approval of a resubmission shall not apply to such revisions.

3.12.10 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering, unless such services are specifically required by the Contract Documents, for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures as required by the Contract Documents. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the



adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Subparagraph 3.12.10, the Architect and Owner will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

3.13 USE OF SITE. The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with material or equipment.

3.14 CUTTING AND PATCHING.

3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner, and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

3.15 CLEANING UP.

3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor, and promptly paid to Owner.

3.16 ACCESS TO WORK. The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

3.17 ROYALTIES, PATENTS AND COPYRIGHTS. The Contractor shall pay all royalties and license fees associated with the Work. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall indemnify and hold the Owner and the Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process, or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

3.18 INDEMNIFICATION.



3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the Owner, Architect, and their respective consultants, agents, and employees from and against claims, damages, losses and expenses, including, without limitation, attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself – to the extent that the Work is covered by required insurance), but only to the extent caused by the negligent acts (**WHETHER ORDINARY NEGLIGENCE OR GROSS NEGLIGENCE**) or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder or subject to required insurance as provided in the Contract Documents. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 3.18.

3.18.2 In claims against any person or entity indemnified under this Paragraph 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Subparagraph 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

#### **ARTICLE 4**

#### **ARCHITECT**

##### **4.1 GENERAL.**

4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect and includes the Architect's authorized representative.

4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld. Each of Owner, Architect, and Contractor acknowledge and agree that the role of Architect in connection with the Project is that of an architectural professional, contract administrator, and as an advisor to Owner – but not that of the decision-maker on behalf of Owner. Notwithstanding anything in the Contract Documents to the contrary, Owner retains all right to make the final decisions under the Contract Documents and does not assign or, by inaction, abdicate any such authority to Architect. Where, in the Contract Documents, Architect is to make a "decision" such decision shall serve as and be a recommendation for action to Owner and not binding upon the Owner.

4.1.3 If the employment of the Architect is terminated, the Owner shall employ a new Architect against whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the former Architect.

##### **4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT.**

4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative: (1) during construction; (2) until final payment is due; and (3) with the Owner's concurrence, from time to time during the one (1) year period for correction of Work described in Paragraph 12.2. The Architect will have authority to act on behalf of the Owner only to the extent





provided in the Contract Documents and as limited by Paragraph 4.1 above, unless otherwise modified in writing in accordance with other provisions of the Contract.

4.2.2 The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (at a minimum of 1 site visit per month unless stated differently in the Owner/Architect Agreement) and in connection with such visits is: (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed; (2) to endeavor to guard the Owner against defects and deficiencies in the Work; and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will neither have control over, nor charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Subparagraph 3.3.1. On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner: (y) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (z) defects and deficiencies observed in the Work.

4.2.3 The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

4.2.4 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the Owner and Contractor shall, when practical, include the Architect in communication about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts to Owner for review and consideration in accordance with the Contract Documents.

4.2.6 The Architect will have authority to recommend that Owner reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

4.2.7 The Architect will review and recommend Owner approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples. Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor, or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such



submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's recommendation of approval of a specific item shall not indicate approval (or recommendation of approval) of an assembly of which the item is a component.

4.2.8 The Architect will prepare the terms and details to be incorporated into a Modification of Agreement for acceptance by Owner as provided in Paragraph 7.4. The Architect will investigate and make preliminary determinations and issue recommendations regarding concealed and unknown conditions as provided in Paragraph 3.7.4. The approval of Modification of Contract documents shall be in the sole purview and control of Owner.

4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner, for the Owner's review, approval, and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment for consideration by Owner upon compliance with the requirements of the Contract Documents.

4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

4.2.11 The Architect will interpret and provide its recommendations concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. The Architect's interpretation regarding such matters shall not be binding upon Owner or Contractor.

4.2.12 The Architect will interpret and provide its recommendations concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) days after written request is made for them.

4.2.13 The Architect's interpretations and recommendations on matters relating to aesthetic effect will be recommendations to Owner and become final if there is no objection thereto by Owner.

4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## **ARTICLE 5**

### **SUBCONTRACTORS**



## 5.1 DEFINITIONS.

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term “Subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term “Subcontractor” does not include a separate contractor or subcontractors of a separate contractor.

5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term “Sub-subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

## 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK.

5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after a reasonable time for due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply within a reasonable time shall constitute notice of no reasonable objection, provided it shall not prohibit Owner or Architect from subsequent objection to such person or entity as permitted under the Contract Documents, including, without limitation, these General Conditions.

5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work of the same quality, caliber, and using similar materials to that of the replacement person or entity obtained as a replacement, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Modification of Contract shall be issued before commencement of the substitute Subcontractor’s Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required and obtaining a qualified replacement.

5.2.4 The Contractor shall not change a Subcontractor, person, or entity previously selected if the Owner or Architect makes reasonable objection to such substitute. Each such change proposed by the Contractor shall be processed in the same manner as though the replacement Subcontractor, person, or entity were a new submission hereunder.

5.3 SUBCONTRACTUAL RELATIONS. By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, person, or entity to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor, person, or entity’s Work, which the Contractor, person, or entity, by the Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect





the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor, person, or entity so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, person, or entity unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors, subject to the foregoing terms. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

#### 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS.

5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

5.4.1.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 14.2, or for non-performance by Contractor or any Subcontractor in accordance with the Contract Documents and the parties are unable to promptly reach mutual agreement regarding resolution of same, and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing; and

5.4.1.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract, subject to the terms and conditions contained in the Contract Documents to the contrary, and any amendment or modification entered by such subcontractor and Owner.

5.4.2 Upon such assignment, if the Work has been suspended for more than thirty (30) days, the Subcontractor's compensation may be equitably adjusted for increases in cost resulting from the suspension.

5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract, to the extent such agreements are cancelled or otherwise modified as provided by the Contract Documents.

### ARTICLE 6

#### CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS.



6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule and Work Project Schedule deemed necessary after a joint review and mutual agreement. The construction schedules, as so modified shall then constitute the updated Work Project Schedule to be used by the Contractor, separate contractors, and the Owner until subsequently revised or updated.

6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11 and 12.

## 6.2 MUTUAL RESPONSIBILITY.

6.2.1 The Contractor shall afford the Owner and any separate contractor reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

6.2.2 If part of the Contractor's Work depends, for proper execution or results, upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect and Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities, or defective construction of the Contractor or upon its behalf. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2.5.



6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Subparagraph 3.14.

6.3 OWNER'S RIGHT TO CLEAN UP. If a dispute arises among the Contractor, separate contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

## ARTICLE 7

### CHANGES IN THE WORK

#### 7.1 GENERAL.

7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by "Modification of Contract" which may be an: (A) Change Order, (B) Construction Change Directive, or (C) order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.2 A Change Order, effected through a Modification of Contract, shall be based upon agreement among the Owner, and Contractor. A Construction Change Directive, effected through a Modification of Contract, shall be issued by the Owner and may or may not be agreed to by the Contractor or Architect.

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Modification of Contract associated with a Change Order, Construction Change Directive, or minor change in the Work.

7.1.4 Changes in the Work, effected by Modification of Contract shall be accomplished in accordance with the then current Development Procedures Manual for the Housing Authority of the City of El Paso and its development affiliates, the present version of which is Version 3.0, adopted August 3, 2016, and as amended from time to time (the "Development Procedures Manual"). A copy of the Development Procedures Manual as it exists as of the signing of these General Conditions is attached hereto as Schedule 7.1.4. The Owner, Contractor, and Architect acknowledge and agree that the Development Procedures Manual shall control over contrary provisions set forth in the Contract Documents. The provisions of this 7.1.4 expressly override contrary provisions of Contract Documents.

#### 7.2 CHANGE ORDERS.

7.2.1 A Change Order is effectuated through a Modification of Contract which is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- 7.2.1.1 change in the Work;
- 7.2.1.2 amount of the adjustment, if any, in the Contract Sum; and
- 7.2.1.3 extent of the adjustment, if any, in the Contract Time.



7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Subparagraph 7.3.3 and shall include the applicable provisions and requirements set forth in the Development Procedures Manual, to the extent applicable.

7.3 CONSTRUCTION CHANGE DIRECTIVES.

7.3.1 A Construction Change Directive effectuated through a Modification of Contract which is a written order prepared and signed by the Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive effectuated through a Modification of Contract, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract time being adjusted accordingly.

7.3.2 A Construction Change Directive effectuated through a Modification of Contract shall be used in the absence of total agreement on the terms of a Change Order. Construction Change Directives shall be issued in accordance with the procedures set forth in the Development Procedures Manual.

7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

7.3.3.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

7.3.3.2 Unit prices stated in the Contract Documents or subsequently agreed upon;

7.3.3.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee, as provided for Changes in Construction in the Agreement; or

7.3.3.4 As provided in Subparagraph 7.3.7.

7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Modification of Contract so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted, with such adjustment being subject to the provisions and requirements set forth in the Development Procedures Manual.

7.3.5 Upon receipt of a Modification of Contract, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect and Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Modification of Contract for determining the proposed adjustment in the Contract Sum or Contract Time.

7.3.6 A Modification of Contract signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Modification of Contract.

7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for indirect costs, and overhead and profit. In such case, and also under Subparagraph 7.3.3.3, the Contractor shall keep and present, in such form as the Architect or Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise



provided in the Contract Documents, costs for the purposes of this Subparagraph 7.3.7 shall be limited to the following:

7.3.7.1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

7.3.7.2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

7.3.7.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

7.3.7.4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work consistent with the Agreement; and

7.3.7.5 additional costs of supervision and field office personnel directly attributable to the change.

7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

7.3.9 Pending final determination of the total cost to Owner of a Construction Change Directive effectuated through a Modification of Contract, amounts not in dispute for such changes in the Work shall be included in Applications for Payment, indicating the Owner and Contractor's agreement with the undisputed costs. For any portion of the costs which remain in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs. That interim determination of cost shall adjust the Contract Sum on the same basis as an agreed Modification of Contract, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation of an appropriate Modification of Contract.

#### 7.4 MINOR CHANGES IN THE WORK.

7.4.1 The Owner, not the Architect, has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written Modification of Contract signed by the Owner and shall be binding on the Owner and Contractor.

7.4.2 Upon receipt of a Modification of Contract issued under Subparagraph 7.4.1, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect and Owner of the Contractor's agreement or disagreement with the method, if any, provided in such Modification of Contract for determining the proposed adjustment in the Contract Sum or Contract Time.

### **ARTICLE 8**

#### **TIME**



## 8.1 DEFINITIONS.

8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

8.1.2 The date of commencement of the Work is the date established in the Agreement, as confirmed by the Notice to Proceed issued by Owner to Contractor.

8.1.3 The date of Substantial Completion is the date set forth in the Notice to Proceed issued by Owner to Contractor, subject to the changes in the Contract Time as certified by the Architect in accordance with Paragraph 9.8.

8.1.4 The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

## 8.2 PROGRESS AND COMPLETION.

8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a Notice to Proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five (5) days or other agreed longer period before commencing the Work to permit the timely filing of mortgages, mechanic’s liens and other security interests.

8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.2.4 If the Owner requires or causes the Contractor to accelerate the Work Progress Schedule or to change the sequence in which the Work shall be performed, and such acceleration or change requires the Contractor to incorporate materials or equipment in the Work before measures can be undertaken by the Contractor to protect such Work, the Contractor shall give prompt written notice of such to the Owner. Owner and Contractor shall then seek to attain agreement as to the time needed to protect that Work and provide adequate time for same. Should the Owner direct the Contractor to proceed in the absence of appropriate measures to protect the Work, the Owner (1) waives claims for any damages resulting directly as a result of Owner not permitting Contractor to protect that portion of the Work which was left unprotected as a result of Owner’s directive, and (2) shall defend, indemnify and hold harmless the Contractor, its Subcontractors and Sub-subcontractors and the agents, officers, directors and employees of each of them, from and against any and all direct claims, damages, losses, costs and expenses, including but not limited to attorneys’ fees, losses, costs and expenses incurred solely in connection with any testing, remediation, and dispute resolution process, arising out of or relating that portion of the Work unprotected as a result of Owner’s insistence in implementing an acceleration of the Work Progress Schedule or change in the sequence of the Work without adequate time to correct the impacted Work.

## 8.3 DELAYS AND EXTENSIONS OF TIME.





8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's reasonable control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes which may justify delay, then the parties shall seek to adjust the Contract Time by Modification of Contract for such reasonable time as the Owner and Contractor may determine. If mutual agreement cannot be reached on the adjustment of the Contract Time, either party may assert a Claim.

8.3.2 Claims relating to time and adjustment to Contract Time shall be made in accordance with applicable provisions of Article 15.

8.3.3 This Paragraph 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

#### ARTICLE 9 PAYMENTS AND COMPLETION

9.1 **CONTRACT SUM.** The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

9.2 **SCHEDULE OF VALUES.** Before the first Application for Payment, the Contractor shall submit to the Owner and Architect, a schedule of values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

#### 9.3 APPLICATIONS FOR PAYMENT.

9.3.1 Unless otherwise provided to the contrary in the other Contract Documents (in which case the provisions of the other Contract Documents shall prevail), at least ten (10) days before the date established for each progress payment, the Contractor shall submit to the Owner and Architect an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

9.3.1.1 As provided in Subparagraph 7.3.9, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Modification of Contract, or by interim determinations of the Architect, but not yet included in a Modification of Contract.

9.3.1.2 Such Applications for Payment may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall



include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates of Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. The Contractor shall be responsible for the delivery of conditional or final lien releases in connection with each Application for Payment, as provided in the Contract Documents.

#### 9.4 CERTIFICATES FOR PAYMENT.

9.4.1 The Architect will, within seven (7) days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Subparagraph 9.5.1.

9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### 9.5 DECISIONS TO WITHHOLD CERTIFICATION.

9.5.1 The Owner may withhold a Payment in whole or in part, in accordance with the Contract Documents, or to the extent reasonably necessary to protect the Owner, if in the Owner's opinion the representations to the Owner required by Subparagraph 9.4.2 cannot be made. If the Owner or Architect is unable to certify payment in the amount of the Application for Payment, the Owner or Architect, as applicable, will notify the Contractor as provided in Subparagraph 9.4.1. If the Contractor and Owner cannot fully agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount for which the Owner and Contractor are able to reach agreement and the Architect is able to make such representations to the Owner. The Owner may also withhold a Certificate for Payment or payment, because of subsequently discovered evidence, which may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Owner's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Paragraph 3.3.2, because of

9.5.1.1 defective Work not remedied;





9.5.1.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

9.5.1.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

9.5.1.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

9.5.1.5 damage to the Owner or a separate contractor;

9.5.1.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

9.5.1.7 repeated failure to carry out the Work in accordance with the Contract Documents.

9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

9.5.3 If the Architect withholds certification for payment under Subparagraph 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

## 9.6 PROGRESS PAYMENTS.

9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

9.6.2 The Contractor shall promptly pay each Subcontractor upon receipt of payment from the Owner, out of the amount paid to Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner on account of portions of the Work done by such Subcontractor.

9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.



9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

9.7 **FAILURE OF PAYMENT.** If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor in accordance with the Contract Documents, or as awarded in accordance with the dispute resolution provisions of the Contract Documents, then the Contractor may, upon seven (7) calendar days' written notice (after the required date of payment pursuant to the Contract Documents) to the Owner and Architect, stop the Work until payment of the undisputed amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

9.8 **SUBSTANTIAL COMPLETION.**

9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

9.8.6 Upon occupancy of the Work, the Owner shall assume sole responsibility to operate and maintain the Work properly and in accordance with the operating instructions, directives, and information



provided by the Contractor in connection with the operation of the Work and the Project. To the extent that Contractor has provided Owner with the necessary information and Owner or its agents disregard (whether through ORDINARY NEGLIGENCE OR OTHERWISE) such information, Owner waives any claims by the Owner against the Contractor, its Subcontractors and Sub-subcontractors and the agents, officers, directors and employees of each of them, for any damages resulting from improper operation and maintenance, including, without limitation, to damages arising from mold and other microbial conditions.

#### 9.9 PARTIAL OCCUPANCY OR USE.

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Subparagraph 11.3.1.5 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect and Owner as provided under Subparagraph 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor as set forth in the Schedule of Work.

9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### 9.10 FINAL COMPLETION AND FINAL PAYMENT.

9.10.1 Subject to compliance with the more detailed provisions contained in the Contract Documents, upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner and Architect will each promptly make such inspections as desired; and, when the Owner and Architect find the Work acceptable under the Contract Documents and the Contract fully performed, the Owner and Architect will each promptly issue a final Application for Payment stating that to the best of the Owner and Architect's respective knowledge, information and belief, and on the basis of the Owner and Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Application for Payment is due and payable. Each of the Owner and Architect's final Application for Payment will constitute a further representation that conditions listed in Subparagraph 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied; (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner; (3) a written statement that the Contractor knows of no substantial reason



that the insurance will not be renewable to cover the period required by the Contract Documents; (4) consent of surety, if any, to final payment; and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract Documents, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner or the Contract Documents, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Modification of Contract affecting final completion, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Owner prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

9.10.4.1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;

9.10.4.2 failure of the Work to comply with the requirements of the Contract Documents;

or

9.10.4.3 terms of special warranties required by the Contract Documents.

9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## **ARTICLE 10**

### **PROTECTION OF PERSONS AND PROPERTY**

10.1 **SAFETY PRECAUTIONS AND PROGRAMS.** The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract Documents.

10.2 **SAFETY OF PERSONS AND PROPERTY.**

10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

10.2.1.1 employees on the Work and other persons who may be affected thereby;



10.2.1.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

10.2.1.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in subparagraphs 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under subparagraphs 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under paragraph 3.18.

10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

10.2.8 **INJURY OR DAMAGE TO PERSON OR PROPERTY.** If any party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty one (21) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

### 10.3 HAZARDOUS MATERIALS.

10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding the handling of hazardous materials required thereunder. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent contamination of the Work foreseeable bodily injury or death to persons resulting from a material or substance, including, without limitation, mold, mildew, fungi or similar microbial





conditions, asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

10.3.2 Upon receipt of the Contractor's written notice in accordance with Subparagraph 10.3.1, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7.

10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance contaminates the Work or presents the risk of bodily injury or death as described in Subparagraph 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself to the extent covered by insurance as provided herein), including, without limitation, the existence, development, or growth of mold, mildew, fungi, or other microbial conditions and provided that damage, loss or expense is not due to the sole fault or negligence of the party seeking indemnity.

10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents, in which case the Owner shall be responsible for the existence of such materials or substances, but not the methods or means of incorporating same into the Project. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence (including ORDINARY NEGLIGENCE) in the use and handling of such materials or substances.

10.3.5 The Contractor shall indemnify, defend, and hold harmless the Owner for all reasonable and necessary cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify, defend, and hold harmless the Contractor for all reasonable and necessary cost and expense thereby incurred.

10.4 EMERGENCIAS. 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. Additional compensation or



extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

## ARTICLE 11

### INSURANCE AND BONDS

#### 11.1 CONTRACTOR'S LIABILITY INSURANCE.

11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

11.1.1.1 claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;

11.1.1.2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

11.1.1.3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

11.1.1.4 claims for damages insured by usual personal injury liability coverage;

11.1.1.5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

11.1.1.6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

11.1.1.7 claims for bodily injury or property damage arising out of completed operations;  
and

11.1.1.8 claims involving contractual liability insurance applicable to the Contractor's obligations under Paragraph 3.18.

11.1.2 The insurance required by Subparagraph 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. Owner and others required by written contract shall be additional insureds on the general, auto and excess liability policies on a primary and non-contributory basis, and such coverages shall include a waiver of subrogation in favor of such additional insureds. A workers compensation waiver of subrogation shall also be included. The required additional insured and waiver of subrogation endorsements shall be attached to the certificates of insurance required in Paragraph 11.1.3.





11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Paragraph 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner. If any of the forgoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Paragraph 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

11.1.4 In addition to continuously maintaining in force all of the minimum insurance coverages and policy endorsements required to be maintained under the Contract Documents (collectively the "Required Insurance") and delivering to Owner any and all certificates or other proof of insurance in the form and at the times required by the Contract Documents, each of the Contractor, and any Sub-contractor will cause a certificates for (1) Builder's Risk Insurance and (2) Liability Insurance to include Owner as a "named insured". Also the Contractor and any Sub-contractor shall, at the request of Owner, cause all insurance certificates to include as additional insureds those additional entities financing the Project as instructed by Owner.

11.1.5 A loss insured under the property insurance shall be adjusted by the Owner, Contractor, and (if applicable, a Sub-contractor), and made payable to the Owner, Contractor, and (if applicable, a Sub-contractor) for the benefit of the named insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Paragraph 11.1.7 below. The Contractor, and (if applicable, a Sub-contractor), as applicable, shall pay Sub-subcontractors their just shares of insurance proceeds received by the Contractor or Sub-contractor, and by appropriate agreements, written where legally required for validity, shall require Sub-subcontractors to make payments to their subcontractors in similar manner.

11.1.6 If required in writing by a party in interest, the Owner, the Contractor, and (if applicable, the Sub-contractor) shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's, Contractor's, and (if applicable, Sub-contractor's) duties under the Contract Documents. The cost of required bonds shall be charged against proceeds received. The Owner, Contractor, and (if applicable, the Sub-contractor) shall deposit in a separate account proceeds so received, which the Owner, Contractor, and (if applicable, Sub-contractor) shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of dispute resolution selected in the Agreement between the Owner, Contractor, and (if applicable, any agreement with the Sub-contractor). If after such loss no other special agreement is made and unless the Owner terminates the Agreement for convenience and to the extent funds are available replacement of damaged property shall be performed by the Contractor, and by extension (if applicable the Sub-contractor) after notification of a Change in the Work in accordance with Article 7 of these General Conditions.

11.1.7 The Owner, the Contractor, and (if applicable, the Sub-contractor) shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five (5) days after receipt of written notice of occurrence of loss to the Owner's, the Contractor's or (if applicable, the Sub-contractor's) exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor, as set forth in the Agreement.

11.1.8 Each Sub-contractor and Sub-subcontractor must maintain the general liability and workers compensation insurance coverage as required by the Agreement, or as otherwise agreed in writing by the



Owner, Contractor, and (if applicable, the Sub-contractor). Contractor (or, if applicable, the Sub-contractor) will maintain certificates and evidence of insurance with regard to coverages for all Sub-subcontractors and make such certificates and evidence of insurance available to Contractor and Owner upon request.

11.2 OWNER'S LIABILITY INSURANCE. The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

11.3 PROPERTY INSURANCE.

11.3.1 Unless otherwise provided, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, if Owner requests and supplies values in writing for materials and labor furnished by Owner or by Owner's separate contractors, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Paragraph 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, water damage, stored material, material in transit, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Agreement and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Sub-contractors and Sub-subcontractors in the Work, and, by appropriate Modification of Contract, the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

11.3.1.4 The property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

11.3.1.5 Partial occupancy or use in accordance with Paragraph 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.



11.3.2 **BOILER AND MACHINERY INSURANCE.** The Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

11.3.3 **LOSS OF USE INSURANCE.** The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor and all tiers of subcontractors for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Subparagraph 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

11.3.6 Before an exposure to loss may occur, the Contractor shall file with the Owner certificate of insurance that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each certificate shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Owner.

11.3.7 **WAIVERS OF SUBROGATION.** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, and employees, each of the other, and (2) the Architect, Architect's consultants (but only as respects their on-site activities, excluding any loss or damage arising from the performance of professional services by the Architect or the Architect's consultants), and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss, which waiver of rights shall be limited to the extent the foregoing are covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise limited to the amount so paid under any such policy. The foregoing waivers of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged, but in all events shall be limited to the amount so paid under any such policy.



11.3.8 A loss insured under the Contractor's property insurance shall be adjusted by the Contractor and made payable to the Owner and Contractor for the benefit of the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Subparagraph 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

11.3.9 If required in writing by a party in interest, the Owner and Contractor shall, upon occurrence of an insured loss, give bond for proper performance of the Owner and Contractor's duties. The cost of required bonds shall be charged against proceeds received. The Owner and Contractor shall deposit in a separate account proceeds so received, which the Owner and Contractor shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, and to the extent funds are available replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

11.3.10 The Contractor shall have power to adjust and settle a loss with insurers, but shall give notice of same to Owner and Architect for review and comment prior to finalizing any such adjustment or settlement. Unless one of the parties in interest shall object in writing within five (5) days after receipt of notice of a proposed adjustment of settlement; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Contractor as trustee shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

#### 11.4 PERFORMANCE BOND AND PAYMENT BOND.

11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

### **ARTICLE 12**

#### **UNCOVERING AND CORRECTION OF WORK**

##### 12.1 UNCOVERING OF WORK.

12.1.1 If a portion of the Work is covered contrary to the Architect or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect or Owner, be uncovered for the examination and be replaced at the Contractor's expense without change in the Contract Time or Contract Sum.

12.1.2 If a portion of the Work has been covered which the Architect or Owner has not specifically requested to examine prior to its being covered, the Architect or Owner may request to see such Work and it



shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Modification of Agreement, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

## 12.2 CORRECTION OF WORK

12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION. The Contractor shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and Owner's expenses made necessary thereby, shall be at the Contractor's expense.

### 12.2.2 AFTER SUBSTANTIAL COMPLETION.

12.2.2.1 In addition to the Contractor's obligations under Paragraph 3.5, if, within one (1) year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Subparagraph 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one (1) year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Paragraph 2.4.

12.2.2.2 The one (1) year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

12.2.2.3 The one (1) year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Paragraph 12.2.

12.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.2.5 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor has under the Contract Documents. Establishment of the one (1) year period for correction of Work as described in Paragraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents 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 the Contractor's obligations other than specifically to correct the Work.

12.3 ACCEPTANCE OF NONCONFORMING WORK. If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

### ARTICLE 13

#### MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW. The Contract shall be governed by the law of the place where the Project is located.

13.2 SUCCESSORS AND ASSIGNS.

13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Subparagraph 13.2.2 or the Contract Documents, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project to Owner, if the lender assumes the Owner's rights and obligations under the Contract Documents upon an occurrence of an event of default under the applicable loan documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

13.3 WRITTEN NOTICE. Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail to, the last business address known to the party giving notice.

13.4 RIGHTS AND REMEDIES.

13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

13.4.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

13.5 TESTS AND INSPECTIONS.

13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests,



inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

13.5.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Subparagraph 13.5.3, shall be at the Owner's expense.

13.5.3 If such procedures for testing, inspection or approval under Subparagraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

13.6 INTEREST. Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

13.7 TIME LIMITS ON CLAIMS. The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than ten (10) years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

## ARTICLE 14

### TERMINATION OR SUSPENSION OF THE CONTRACT

#### 14.1 TERMINATION BY THE CONTRACTOR.

14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of forty five (45) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:





14.1.1.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

14.1.1.2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;

14.1.1.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

14.1.1.4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than one hundred percent (100%) of the total number of days scheduled for completion, or one hundred twenty (120) days in any three hundred sixty five (365) day period, whichever is less.

14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven (7) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

14.1.4 If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.3.

#### 14.2 TERMINATION BY THE OWNER FOR CAUSE.

14.2.1 The Owner may terminate the Contract if the Contractor

14.2.1.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

14.2.1.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

14.2.1.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

14.2.1.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven (7) days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:



14.2.2.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

14.2.2.2 Accept assignment of subcontracts pursuant to Section 5.4; and

14.2.2.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

#### 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE.

14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

14.3.2.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

14.3.2.2 that an equitable adjustment is made or denied under another provision of the Contract.

#### 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE.

14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause, as provided in the Contract Documents. The Owner and Contractor acknowledge and agree that the terms and provisions of the Department of Housing and Urban Development ("HUD") Form HUD-92408-M; and HUD Form HUD-5370-C (collectively the "**HUD Addenda**") are incorporated into these General Conditions as though fully recited verbatim herein and altered to use the definitions and language of the Contract Documents. Contractor and any person acting by or through Contractor, by undertaking any activity in connection with the Project acknowledge and agree that they have read and fully understand the implication of the HUD Addenda and its impact on the Contract Documents. Additionally, these General Conditions incorporate by reference the provisions of 46 C.F.R. 52.249-2 – the Termination for Convenience provisions of the Federal Acquisition Regulations, and those provisions and the Federal Acquisition Regulations pertaining thereto are incorporated by reference as though fully set forth verbatim herein.

14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

14.4.2.1 cease operations as directed by the Owner in the notice;



14.4.2.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

14.4.2.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

## **ARTICLE 15**

### **CLAIMS AND DISPUTES**

#### **15.1 CLAIMS.**

15.1.1 **DEFINITION.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

15.1.2 **NOTICE OF CLAIMS.** Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect and Owner. Claims by either party must be initiated within twenty one (21) days after occurrence of the event giving rise to such Claim or within twenty one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

15.1.3 **CONTINUING CONTRACT PERFORMANCE.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will continue to process Application of Payments and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

15.1.4 **CLAIMS FOR ADDITIONAL COST.** If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### **15.1.5 CLAIMS FOR ADDITIONAL TIME.**

15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.



15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES. The Contractor and Owner waive Claims against each other for consequential damages (but not liquidated damages) arising out of or relating to this Contract. This mutual waiver includes

15.1.6.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

15.1.6.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

## 15.2 INITIAL DECISION.

15.2.1 Claims, excluding those arising under Paragraphs 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Owner's representative so designated shall serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to assertion of the dispute resolution provisions in the Contract Documents arising prior to the date final payment is due, unless thirty (30) days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered and no efforts of the Initial Decision Maker to make a decision. If the Initial Decision Maker is in the process of obtaining additional information or responses (as provided in this Paragraph 15.2 – the time period to make a decision shall be extended day by day to permit the Initial Decision Maker to make an informed decision. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

15.2.2 The Initial Decision Maker will review Claims and within ten (10) days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party; (2) reject the Claim in whole or in part; (3) approve the Claim; (4) suggest a compromise; or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten (10) days after receipt of such request, and shall either: (1) provide a response on the requested supporting data; (2) advise the Initial Decision Maker when the response or supporting data will be furnished; or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.



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15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall: (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to the dispute resolution provisions of the Contract Documents.

15.2.6 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party utilize the dispute resolution provisions in the Agreement.



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DEVELOPER SERVICES II

Schedule 7.1.4

**Development Procedures Manual**



**RESOLUTION NO. 2122**

**RESOLUTION TO APPROVE THE AMENDED DEVELOPMENT PROCEDURES MANUAL TO INCLUDE A DELEGATION OF AUTHORITY TO THE CHIEF EXECUTIVE OFFICER TO APPROVE PUBLIC WORK CONTRACT CHANGE ORDERS, WITHIN A PREVIOUSLY BOARD-APPROVED DEVELOPMENT BUDGET, IN AMOUNTS UP TO \$250,000**

**WHEREAS**, the Housing Authority of the City of El Paso (the "*Housing Authority*") has adopted a Development Procedures Manual with the purpose of creating a framework for written procedures that ensure that Housing Authority and its development affiliates utilize the best and most efficient organizational methods and management practices;

**WHEREAS**, the Board of Commissioners of the Housing Authority (the "*Board*") has the responsibility and authority, at a duly called public meeting, to approve development, design and construction ("*DDC*") contracts in excess of \$50,000 for the real estate development projects undertaken by the Housing Authority, its affiliates, and its development partners;

**WHEREAS**, the Board of Commissioners further has the responsibility and authority to establish the project budget for DDC contracts in excess of \$50,000, with the project budget to include all DDC costs including a project contingency for unforeseen costs or changes to the project scope;

**WHEREAS**, the Board of Commissioners desires to approve the Development Procedures Manual, as amended, and attached hereto, including the process and procedure to approve change orders on DDC contracts:

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD** that the Development Procedures Manual attached hereto is hereby approved by the Board; and

**NOW, THEREFORE, BE IT FURTHER RESOLVED BY THE BOARD** that pursuant to Texas Government Code §2269.053, the Board hereby delegates authority and authorization to the Chief Executive Officer to approve PCOs arising under sections 7.a, 7.b., and 7.c of the Development Procedures Manual in the amount of up to \$250,000, without prior or subsequent Board approval. Notice of this delegation, and the limits of such delegation of authority, shall be included in requests for bids, proposals, or qualifications, or in an addendum to the request.

**PASSED AND APPROVED**, this 28<sup>th</sup> day of September, 2016.






# Housing Authority of the City of El Paso

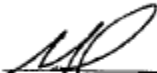
RFP: RAD 17-R-0021

DEVELOPER SERVICES II

**ATTEST:**

  
\_\_\_\_\_  
Secretary

**HOUSING AUTHORITY OF THE  
CITY OF EL PASO, TEXAS**

  
\_\_\_\_\_  
Burt Blacksher, Chairperson

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Legal Counsel

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Chief Executive Officer



# Housing Authority of the City of El Paso

RFP: RAD 17-R-0021

DEVELOPER SERVICES II

**MEETING HELD BY THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY  
OF THE CITY OF EL PASO, TEXAS ON SEPTEMBER 28, 2016**

## **RESOLUTION NO. 2122**

**The following resolution was introduced by Chairperson Blacksher and considered.**

**WHEREAS, The Board of Commissioners of the Housing Authority of the City of El Paso, Texas approved resolution approving the amended Development Procedures manual to include a delegation of authority to the Chief Executive Officer to approve public work contract change orders, within a previously board approved development budget, in amounts up to \$250,000.**

**After discussion Commissioner Ortega moved the resolution presented to the Board be adopted. The motion was seconded by Commissioner Licerio and on roll call the following vote was recorded:**

**AYES: Commissioners Karlsruher, Ortega, Blacksher, Perez, and Licerio.**

**NAYS: None.**

**The Chairperson thereupon declared the motion carried and the resolution adopted.**

**ATTEST:**

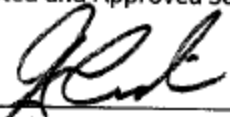
  
\_\_\_\_\_  
Secretary



## **DEVELOPMENT PROCEDURES MANUAL**

for the Housing Authority of the City of El Paso  
and its development affiliates

Version 3.0: Adopted and Approved September 28, 2016

Approved by:   
Gerald Cichon, CEO



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## **Section 1: Purpose**

This Development Procedures Manual was initially implemented effective April 18, 2016, and subsequently amended and approved by the Board of Commissioners on September 28, 2016, to further the strategic goals of the Housing Authority of the City of El Paso ("HACEP") and all of its development affiliates.

This Development Procedures Manual creates a framework for procedures that ensure that HACEP and its development affiliates utilize the best and most efficient organizational methods and management practices. These procedures are part of the commitment by HACEP and its development affiliates to continually improve development services to support HACEP's goals and objectives. These procedures will support achieving the following HACEP 2016 five year goals:

- Goal #1: Create quality, sustainable housing portfolio
- Goal #3: Develop a highly-efficient organization

This Development Procedures Manual will evolve and become a guide to a highly-effective development system that is efficient, makes the best use of development partners, utilizes the most effective sources of financing for development projects, and promotes high quality design and construction to deliver excellent resident satisfaction.



## Section 2: Definitions

For purposes of these procedures, the following terms will have the defined meanings:

**"DDC Costs"** means any development, design, and/or construction costs for goods, services, materials, equipment or labor for a Development Project.

**"DDC Contract"** means any contract for services, goods, materials, equipment, or labor for a Development Project.

**"Development Project"** refers to any real estate development project (including but not limited to a residential housing or other development project) that is designed, constructed, and/or modernized by HACEP through any corporate structure, including through a HACEP general partnership, or through another affiliate structure. The term Development Project is purposefully broad and includes, but is not limited to, any self-financed developments, mixed-finance developments, low income housing tax credit developments, or developments that have been re-constructed or renovated through the Rental Assistance Demonstration ("RAD") conversion.

**"HACEP"** means the Housing Authority of the City of El Paso and its affiliates, including but not limited to Paisano Housing Redevelopment Corp., EP RAD-2 PFC, and EP RAD-3 PFC, as well as any other existing or future development affiliates and, further, any limited liability companies or Texas corporations in which any of the foregoing entities act in any capacity or in any corporate structure, including as a general partner for a limited partnership that develops, finances, constructs, leases, owns or operates a Development Project.

**"Project Budget"** means an itemized listing of DDC Costs for a Development Project, including a project contingency for unforeseen costs or changes to the project scope.

**"Project Completion Delay"** means any event that would lead to an extension of time or delay that would cause a Development Project to not be completed by the completion date established for the project as stated in the construction contract(s), or as set by investors, lenders, regulatory agencies, or other agreements.

**"Public Work Contract"** means a contract for constructing, altering, or repairing a public building or carrying out or completing any public work. For purposes of this Development Procedures Manual, a DDC Contract which, by virtue of HACEP's status as a unit of local government under Texas law, is considered and treated as a Public Work Contract for purposes of Texas Government Code Chapter 2269, which authorizes the Board to officially delegate authority regarding certain contracting actions to a designated representative or person.



### **Section 3: Development Contracts**

**3.1 Board Approval.** The Board, at a duly called public meeting, must vote to approve any DDC Contract in the amount of \$50,000 or more prior to execution of the DDC Contract.

**3.2 CEO Approval.** The CEO, as the contracting officer for HACEP, may approve any DDC Contract in the amount of less than \$50,000.

**3.3 Procurement of DDC Contracts.** The procurement of DDC Contracts shall be conducted in accordance with any applicable laws, regulations and ethical standards, under the guidance of the procurement department and subject to the direction of the CEO. In addition, the procurement of DDC Contracts may in certain circumstances be governed by other development agreements to which HACEP is a party.

### **Section 4: Development Budgets**

**4.1 Itemized General Budget.** At the time the Board approves the execution of a DDC Contract, it may also approve an itemized Project Budget for DDC Costs associated with the DDC Contract. The approved general budget may include pre-approved contingency amounts.

**4.2 Revisions of Development Budgets That Require Board Approval.** Any revision, amendment or other modification of a DDC Contract that results in an increase of the Project Budget amount, including the contingency amount(s) outside the DDC Contract (or otherwise affects HACEP's obligation), in the amount of \$50,000 or more shall be subject to the prior approval of the Board.

### **Section 5: Development Expenditures**

**5.1 Expenditures for DDC Costs Made Within an Approved Budget.** The CEO is authorized to delegate, without prior or subsequent Board approval, authority to approve changes within (meaning, changes which do not increase) an approved Project Budget. The CEO's delegation authority includes approval and issuance of contingency amounts provided the contingency amounts are: (a) within the approved Project Budget, (b) stated in the DDC Contract; and (b) reported in a timely manner to the Board. The delegated financial authority approved by the CEO is set forth in Part A of the matrix attached hereto as Attachment A.





## **Section 6: Staff Management of Development Contracts**

**6.1 Staff Management of DDC Contracts.** As delegated by the CEO, HACEP staff are authorized, without prior or subsequent Board approval, to take necessary and appropriate management actions on DDC Contracts, such as issuing notices to proceed, stop work orders, accepting documents, documenting negotiations, sending letters and executing other non-financial contract administrative documents. The delegated management authority approved by the CEO to HACEP staff is set forth in Part B of the matrix attached hereto as Attachment A.

## **Section 7: Provisions for Development Projects with Third-Party Developers**

**7.1 Approval of Change Orders for Projects with a Third-Party Developer.** HACEP adopts this procedure to ensure timely and efficient approval of change orders and/or contract modifications (hereinafter collectively referred to as a “change order”) to DDC Contracts for any Development Project in which HACEP has contracted or partnered with a third-party developer (a “Developer”) and for which no Board approval is required for the change order pursuant to Sections 3, 4, and 5, above.

**a. Potential Change Orders of \$20,000 or Less.** A potential change order, or any similar document that commits the parties to making a change in the project scope, cost, and/or schedule (a “PCO”) that is in the amount of \$20,000 or less and will not result in a Project Completion Delay may be approved by the Developer alone, and without the approval of HACEP, provided the scope of work for the PCO is approved by the Architect retained for the Development Project (provided the Architect approval includes review with no exceptions taken). A PCO approved pursuant to this Section 7.1(a) is binding on HACEP after approval by the Developer. No cost review by a third-party cost consultant is required for such change orders.

**b. Potential Change Orders Greater Than \$20,000 But Less Than \$50,000.** A PCO in an amount greater than \$20,000 but less than \$50,000 and which will not result in a Project Completion Delay may be approved by the Developer without HACEP approval if both: (i) the scope of work is approved by the Architect retained for the Development Project and (ii) the cost is approved by an independent, qualified, HACEP-approved third-party cost consultant. A PCO approved pursuant to this Section 7.1(b) is binding on HACEP after approval by the Developer.

**c. Change Orders Greater Than \$50,000.** A PCO in an amount exceeding \$50,000 shall be subject to the following process for approval: (i) first, the scope of work of the PCO must be approved by the Architect, (ii) second, the cost of the PCO must be approved by an independent, qualified third-party cost consultant approved by HACEP;



and (iii) third, only after obtaining the Architect and third-party cost consultant approvals, the Developer shall submit the PCO for review and possible approval by HACEP. A PCO submitted pursuant to this Section 7.1(c) is binding on HACEP only after execution of a Contract Modification.

**d. HACEP Delegation of Authority to CEO for Change Orders Up to \$250,000.** Pursuant to Texas Government Code §2269.053, the Board hereby delegates authority and authorization to the CEO to approve PCOs arising under sections 7.a, 7.b., and 7.c above in the amount of up to \$250,000, without prior or subsequent Board approval. Notice of this delegation, and the limits of such delegation of authority, shall be included in requests for bids, proposals, or qualifications, or in an addendum to the request.

## **7.2 Procedures for all PCOs and Contract Modifications Arising Under Section 7.**

a. Scheduled Meetings To Document PCOs/Change Orders. HACEP, Developer, Contractor and Prime Subcontractor<sup>1</sup> shall meet on a mutually-agreed upon schedule (and if there is no such agreement, then the meetings will take place on a weekly basis while the Development Project is ongoing) to review and document any PCOs or Contract Modifications arising under this Section 7.

b. Preparation of Contract Modification Document. The Developer shall, prior to or at the scheduled meeting, draft and deliver to HACEP and Contractor all of the PCOs that have been approved by the Developer or that are beyond the scope of the Developer's approval authority since the last approved Contract Modification. HACEP will prepare a Contract Modification for all Developer and HACEP approved PCOs.

c. HACEP Review Period to Consider Approval or Submission of Written Objections. HACEP and Contractor will, within five working days of receipt of the PCOs either (i) execute a Contract Modification to reflect HACEP's approval of the Contract Modification or, (ii) if HACEP objects to the Contract Modification, HACEP will state its objections in writing. In the event the Contract Modification includes PCOs that cannot be approved by the Developer per 7.1(c), above, HACEP's five working-day review and approval/objection period commences only after the steps set forth in 7.1(c)(i) and 7.1(c)(ii) have been completed.

## **7.3 Extensions of Time; Project Completion Delays.**

a. Extensions of Time at Projects Involving Single Community/Single Construction Site. For Development Projects consisting of a single residential community or single construction site, the Developer may approve a PCO provided the resulting change

<sup>1</sup> This procedure assumes the Contractor will be Affordable Housing Enterprises, a HACEP affiliate.



order results in a cumulative extension of time that is no greater than 30 calendar days and does not result in a Project Completion Delay.

b. Extensions of Time at Projects Involving Multiple Communities/Multiple Construction Sites. For Development Projects consisting of multiple communities or multiple construction sites, the Developer may approve a PCO provided the resulting change order results in a cumulative extension of time that is no greater than 30 calendar days for any single community/site and does not result in a Project Completion Delay.

c. PCOs That Result in Project Completion Delays Must Be Approved in Advance by HACEP. Developer shall not propose, accept, or approve any PCOs that will result in Project Completion Delay without the prior written consent of HACEP.

**7.4 Disagreements or Claims.** Disagreements or claims will be resolved per the Construction Contract and Prime Subcontract. The procedures set forth in Section 7 do not modify the claims process agreed to by the parties to any DDC Contract.

**7.5 Payment Applications.** The process for payment applications is as follows: (a) Developer submits Architect-approved Construction Draw to HACEP; (b) HACEP reviews within five working days and forwards approval or returns comments to Developer; (c) Developer combines approved construction draw with soft and other costs and forwards to any lenders or investors who have the right to review and advise HACEP on or approve the payment application; (d) if approved by any lenders or investors with the right to pre-approve such payments, then HACEP is authorized to pay the payment application. Lender approval will serve as approval for any HACEP gap loan.

**7.6 Audit.** The processes established in this Section 7 do not modify any rights HACEP has to audit contracts or payments.

## **Section 8: Miscellaneous: Reporting, Enforcement, Conflict with Legal Requirements**

**8.1 Reporting to Board.** HACEP staff, through the CEO or at his/her direction, will periodically report to the Finance Committee and/or Board on the progress of all Development Projects, with the reports to include the expenditures authorized pursuant to the approved budget.

**8.2 Enforcement and Monitoring.** The CEO, with the assistance of the CFO, is responsible for enforcement of the procedure and monitoring to ensure compliance with the Policy.



# Housing Authority of the City of El Paso

RFP: RAD 17-R-0021

DEVELOPER SERVICES II

**8.3 Conflict with Other Legal Requirements.** To the extent these procedures conflict with any laws, regulations or other applicable legal requirements, the applicable law, regulation or legal requirement will govern.





# Housing Authority of the City of El Paso

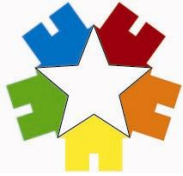
RFP: RAD 17-R-0021

DEVELOPER SERVICES II

Approval authority: development, design, and construction for the Housing Authority of the City of El Paso and					
Part A: Approval Authority, Financial					
What	Board of Commissioners	CEO	CFO	CREO	Director, Design and Construction
Design or construction contracts	\$50,000 and above	Any amount less than \$50,000	None	None	None
Modifications to design or construction contracts with a contingency amount stated within the contract approved by the Board	Above approved contingency	Above \$200,000 up to the approved contingency	None	Above \$100,000 up to \$200,000, if below approved contingency	Up to \$100,000, if below approved contingency
Modifications to design or construction contracts without a contingency amount stated in the contract approved by the Board	\$50,000 and above	Above \$15,000 up to \$50,000	Above \$10,000 up to \$15,000	Above \$5,000 up to \$10,000	Up to \$5,000
Part B: Approval Authority, Managerial					
What	Board	CEO	CFO	CREO	Dir., Design and Const.
Notice to Proceed		X	X, if CEO is absent from the office		
Stop Work Order - Construction Contracts		X	X, if CEO is absent from the office		
Stop Work Order - Architecture/Engineering Contracts					X
Acceptance Documents					X
Records of Negotiations					X
Acceptance Documents					X
Other non-financial contract administration documents					X
<b>Non-performance Letters</b>					
First letter	Director, Design and Construction, with copies to HACEP In-House Counsel, and CREO				
Second letter	CREO, with copies to Director, Design and Construction, HACEP In-House Counsel, and CEO				
Third letter	CEO, with copies to CREO, Director, Design and Construction, and HACEP In-House Counsel				

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Attachment A - HACEP Development Procedures, 160612 proposed\_replacement\_procedures\_Attachment\_A\_Matrix.XLSX



# Housing Authority of the City of El Paso

RFP: RAD 17-R-0021  
DEVELOPER SERVICES II

EXHIBIT G

**DEVELOPMENT COSTS & FEES**

Exhibit G												
Project #1												
Community	Units	Address	Type	Scope of Work	Financing	Estimated Construction Hard Cost	Estimated Total Development Cost	Estimated Developer Fee	Architect	Construction Contractor	Financing/Closing	Developer
Pellicano Place	118	12285 Pellicano Drive (SEC Bob Hope and Pellicano Dr)	Low Rise	New Construction	9% LIHTC, Traditional Debt, Other	\$ 12,993,931	\$ 19,689,627	\$ 2,222,553	To Be Determined	To Be Determined	#1	To Be Determined
Total Units	118											
Project #2												
Community	Units	Address	Type	Scope of Work	Financing	Estimated Construction Hard Cost	Estimated Total Development Cost	Estimated Developer Fee	Architect	Construction Contractor	Financing/Closing	Developer
Medano Heights	146	7801 Medano	Low Rise	New Construction	9% LIHTC, Traditional Debt, Other	\$ 17,964,284	\$ 23,798,362	\$ 2,966,753	RPGA	To Be Determined	#2	To Be Determined
Total Units	146											



RFP: RAD 17-R-0021

DEVELOPER SERVICES II

## EXHIBIT H

### GENERAL CONDITIONS

#### LIST OF ITEMS THAT SHOULD BE INCLUDED IN THE GENERAL CONDITIONS BY CONTRACTOR

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##### SITE PERSONNEL

- Project Manager
- Construction Manager
- Estimator
- Project Superintendent
- General Superintendent
- Project Engineer (Document Control, Cost and Schedule)
- QA/QC Inspector
- Safety Inspector
- Project Administrator
- Clerical Personnel
- Contracts Administrator
- Warehouse Personnel
- Traffic Control People

##### SITE PERSONNEL RELATED

- Subsistence
- Relocation
- Travel Expenses

##### SITE OFFICE





RFP: RAD 17-R-0021

DEVELOPER SERVICES II

Office Facility - Trailer

Office Furniture

Office Printer

Copy Machine

Fax Machine

Work Stations

Internet Services (Installation and Monthly Fees)

Phone Services (Installation and Monthly Fees)

Drinking Water

Janitor Services

Office Supplies

Postage, UPS, Fed-Ex

Delivery Service

Office Trailer Set Up Materials

Lumber, for stairs and walkways

Electrical Material

Plumbing

#### CONSTRUCTION TEMPORARY FACILITIES

Laydown Yard

Fencing Around Laydown Yard

Yard Set up

Sheds & Storage Facilities

Connexes

#### CONSTRUCTION SERVICES



RFP: RAD 17-R-0021

DEVELOPER SERVICES II

- Chemical Toilets
- Electrical Consumption
- Water Consumption
- Gas Consumption
- Security System (Installation and Monitoring)
- Dumpster Fees
- Project Signs
- First Aid Kits
- Safety Items
- Fire Extinguishers
- Pedestrian Walkways
- Safety Barricades
- ID Badges for All Workers
- Personnel Vehicles

#### ADMINISTRATIVE

- Performance and Payment Bond
- Builder's Risk
- Home Office Management
- Recruiting
- Advertising
- Training
- Legal Costs
- Warranty Period Costs
- OSHA /MSHA / Safety Fees



RFP: RAD 17-R-0021

DEVELOPER SERVICES II

**PART II**

**CONTRACT CLAUSES**



RFP: RAD 17-R-0021

DEVELOPER SERVICES II

**SECTION D**

**MANDATORY CLAUSES**



**Federal Acquisition Regulation (FAR) FAR 2005-83/07-02-2015**

**Part II – Contract Clauses Section D**

**Clauses Incorporated by Reference As applicable:**

<b>FAR#:</b>	<b>CLAUSE TITLE</b>	<b>DATE</b>
52.202-1	Definitions	November 2013
52.203-3	Gratuities	April 1984
52.203-5	Covenant Against Contingent Fees	May 2014
52.203-7	Anti-Kickback Procedures	May 2014
52.209-6	Protecting the Governments Interest when Sub-contracting with Contractors Debarred, Suspended or Proposed for Debarment	October 2015
52.215-2	Audit and Records – Negotiation	October 2010
52.215-8	Order of Precedence – Uniform Contract Format	October 1997
52.215-14	Integrity of Unit Prices	October 2010
52.217-6	Option for Increased Quantity	March 1989
52.217-9	Option to Extend the Term of the Contract	March 2000
52.222-4	Contract Work Hours and Safety Standards Act – Overtime Compensation	May 2014
52.222-6	Construction Wage Rate Requirements	May 2014
52.222-18	Certification Requiring Knowledge of Child Labor for Listed End Products	February 2001
52.222-20	Contracts for Materials, Supplies, Articles and Equipment Exceeding \$15,000	May 2014
52.222-26	Equal Opportunity	September 2016
52.222-35	Equal Opportunity for Veterans	July 2014
52.222-36	Equal Opportunity for Workers With Disabilities	July 2014
52.223-2	Affirmative Procurement of Biobased Products Under Services and Construction Contracts	September 2013
52.223-6	Drug Free Work Place	May 2001
52.227-1	Authorization and Consent	December 2007
52.228-5	Insurance – Work on a Government Installation	January 1997



# Housing Authority of the City of El Paso

Solicitation: Third Party Administration of Group Benefit Plans

RFP#: HR 17-R-0020

52.229-3	Federal, State and Local Taxes	February 2013
52.232-7	Payments Under Time-and-Materials and Labor-Hour Contracts	August 2012
52.232-18	Availability of Funds	April 1984
52.232-23	Assignment of Claims	May 2014
52.237-2	Protection of Government Buildings, Equipment and Vegetation	April 1984
52.237-3	Continuity of Services	January 1991
52.242-13	Bankruptcy	July 1995
52.243-3	Changes – Time-and-Materials or Labor-Hours	September 2000
52.243-7	Notification of Changes	January 2017
52.246-17	Warranty of Supplies of a Non-complex Nature	June 2003
52.248-1	Value Engineering	October 2010
52.249-2	Termination for Convenience of the Government (Fixed Price)	April 2012
52.249-8	Default (Fixed Price Supply & Service)	April 1984
52.249-14	Excusable Delays	April 1984
52.252-2	<p><b>Clauses Incorporated by Reference:</b></p> <p>This contract incorporates one or more clauses by reference, with the same forced effect as if they were given in full text.</p>	February 1998



# Housing Authority of the City of El Paso

Solicitation: Third Party Administration of Group Benefit Plans

RFP#: HR 17-R-0020

## General Conditions for Non-Construction Contracts

### Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban Development  
Office of Public and Indian Housing  
Office of Labor Relations  
OMB Approval No. 2577-0157 (exp. 1/31/2017)

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

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

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

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

##### 1. Definitions

The following definitions are applicable to this contract:

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

##### 2. Changes

- (a) The HA may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.
- (b) If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the HA shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if the HA decides that the facts justify it, the HA may receive and act upon a

- (d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

##### 3. Termination for Convenience and Default

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

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

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



(b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.

(c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:

- (i) appeals under the clause titled Disputes;
- (ii) litigation or settlement of claims arising from the performance of this contract; or,
- (iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

**5. Rights in Data (Ownership and Proprietary Interest)**

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

**6. Energy Efficiency**

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

**7. Disputes**

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

**8. Contract Termination; Debarment**

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

**9. Assignment of Contract**

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

**10. Certificate and Release**

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

**11. Organizational Conflicts of Interest**

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

**12. Inspection and Acceptance**

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



(b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.

(c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:

- (i) appeals under the clause titled Disputes;
- (ii) litigation or settlement of claims arising from the performance of this contract; or,
- (iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

## 5. Rights in Data (Ownership and Proprietary Interest)

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

## 6. Energy Efficiency

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

## 7. Disputes

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

## 8. Contract Termination; Debarment

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

## 9. Assignment of Contract

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

## 10. Certificate and Release

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

## 11. Organizational Conflicts of Interest

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

## 12. Inspection and Acceptance

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





(1) Agency and legislative liaison by Own Employees.

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

(ii) Any reasonable payment to a person, other than an officer or employee of a

person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

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

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

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

(iii) Selling activities by independent sales representatives.

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

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

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

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

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

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



## 16. Equal Employment Opportunity

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

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

Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

## 17. Dissemination or Disclosure of Information

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

## 18. Contractor's Status

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

## 19. Other Contractors

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

## 20. Liens

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

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

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of



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apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

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

## 22. Procurement of Recovered Materials

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





### SECTION 3 SPECIFICATIONS CLAUSE (revised 1/22/16 –Compliance Coord,)

The Section 3 information contained in the following pages is to be inserted in its entirety into every solicitation for work or contracts by Housing Authority of the City of El Paso (HACEP), the contractor and sub-contractors. All required forms and the Section 3 Clause are already included along with instructions to all contractors bidding work.

All contractors requiring any sub-contractors **MUST** issue this package and receive these completed **required Section 3 forms** before issuing any contracts:

- Section 3 Business Certification (if applicable)
- Section 3 Action Plan
- Section 3 Self-Certification and Skills Data Form (For Section 3 residents and New hires when applicable)

If the contractor is claiming certification as a 51% Resident Owned Business (ROB) or is certifying as a 30% employer the following form must be returned for all employees that meet the low- or Very low-income requirement

- Section 3 Self-Certification and Skills Data Form

#### Overview and Instructions for Contractors

HACEP's Section 3 policy requires that when the **Section 3 regulation is triggered by a need for new hires (whether individual employees, contractors or sub-contractors)**, every effort within the contractor's disposal must be made to the greatest extent feasible to offer all available employment and contracting opportunities to its residents based on the tiers below. Only when the regulation is triggered by a contractor and they are unable to offer employment or contracting. The contractor may offer employment related training to the Section 3 residents.

#### I. Tiers for offering all opportunities to Section 3 Residents and Resident Owned Businesses

1. At the site where the work is being performed
2. At any other HACEP owned or managed property
3. Other HUD funded beneficiaries including Section 8 Voucher holders
4. Other low-income people in the HACEP service area

#### II. What is a Section 3 Business Concern and how do they receive Preference in contract award?

*A business that meets these certification definitions must receive Preference in contracting:*

1. Is 51% or more owned by Section 3 residents;
  2. Employs Section 3 residents for at least 30% of its full-time, permanent staff; or **(During the entire life of the contract)**
  3. Provides evidence of a commitment to subcontract to Section 3 business concerns, 25% or more of the dollar amount of the awarded contract.
- YOU MUST MAINTAIN THOSE PREFERENCE LEVELS DURING THE ENTIRE CONTRACT OR RISK HAVING THE CONTRACT TERMINATED FOR FAILURE TO COMPLY

#### III. Other Methods of Compliance

Contractors can provide an array of trainings to Section 3 residents that are employment related, skills enhancing or employment readiness in nature. Here are the methods of achieving compliance through training. Training and other employment opportunities must receive prior approval from HACEP.

1. Contractor must develop a solid professional curriculum and it must be pre-approved by HACEP.



2. Contractor may identify a person or persons that are qualified to provide the training within their staff.
3. Contractors can partner with other groups that provide the desired training and pay them directly for the service.
4. The contractor can sub-contract the Section 3 compliance training to an outside firm specializing in training and educational programs to Section 3 residents.

**IV. All Contracts and All Contractors must meet Section 3 compliance by:**

**Step 1** Give notice of any and all opportunities for employment and contracting to HACEP residents and other low and very low-income area residents and businesses by posting the position (s) in community sources that are generally available to low income residents and the general-public.

- (1) Local community newspapers
- (2) Widely distributed newspapers
- (3) Company agency website
- (4) HACEP communities and HACEP website
- (5) Upper Rio Grande Workforce Solutions
- (6) Other locations as approved by HACEP

**Step 2** Hiring notices should clearly state the requirements for applying and achieving the opportunity and that the position is a "Section 3" covered position under the HUD Act of 1968.

**Step 3** Utilize the Section 3 Clause in RFB's, RFP's, RFQ's, etc., contracts and subcontracts.

**Step 4** Hold informational meetings when possible prior to requesting bids or taking applications so the residents or businesses are encouraged to apply for the employment or contracting.

**Step 5** Provide preference in hiring and contracting to Section 3 applicants and contractors when all factors are equal for the opportunity, including price and salary requests.





### Section 3 Clause

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

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

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

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

(d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

(e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

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



Public Housing Authority
Required Submittal
Section 3 Certification and Action Plan

Name of Business \_\_\_\_\_

Address of Business \_\_\_\_\_

Type of Business (Check One): [ ]Corporation [ ]Partnership [ ]Sole Proprietorship [ ]Other

Contract/Solicitation Name or Number: \_\_\_\_\_

All firms and individuals intending to do business with RECIPIENT and contractors MUST complete and submit this Action Plan and submit it with the bid, offer, or proposal. Any solicitation response that does not include this document (completed and signed) will be considered non-responsive and not eligible for award.

I am Certifying as a Section 3 Concern and requesting Preference accordingly (Select only One Option):

51% Resident Owned
A business claiming status as a Section 3 Resident-Owned Business Concern (ROB) entity:
Initial here to select this option \_\_\_\_\_
Provide Certification for Section 3 Residents and proof that they own a minimum 51% of the business

IMPORTANT NOTICE: Preference must be maintained for the entire contract or the contract will be in non-compliance and at risk of termination.

25% Sub-Contracting
A business claiming Section 3 status by subcontracting 25% of the dollar award to qualified Section 3 Business:
Initial here to select this option \_\_\_\_\_
Provide a list of intended subcontract Section 3 business (es) with amount
Provide certification & all supporting documentation for each planned Section 3 Business Concern

30% Employer of Section 3 Residents Currently or New Hires
Section 3 status, because at least 30% of the existing or newly hired workforce for this specific contract will be Section 3 residents throughout the entire contract period. If a Prime or General Contractor is electing this option, the 30% employment requirement will be for the entire project including all the sub-contractors employees.
Initial here to select this option \_\_\_\_\_
I anticipate my total number of employees for this contract to be \_\_\_\_ and \_\_\_\_ will be qualified Section 3.
Check all methods you will employ to secure Section 3 Residents/Persons. Posting the position in community sources that are generally available to low income residents and the general public is a standard requirement. Check at least three (3) methods you will employ
[ ] The local community newspaper
[ ] Widely distributed newspaper
[ ] Company or agency website
[ ] HACEP communities and HACEP website
[ ] Upper Rio Grande Workforce Solutions
[ ] Other locations as approved by HACEP
Other: \_\_\_\_\_



**IF CONTRACTOR DOES NOT ANTICIPATE TRIGGERING THE REGULATION, CHECK BOTH BOXES.**

I do not anticipate any new employees on this contract.

I do not anticipate any new contracting on this contract.

I am certifying that I have complied with the HUD Section 3 Regulations in my past contracts **when required** by the recipient, contractor by employing the following:

<p><b>1.</b> I was a Section 3 Resident-Owned Business (ROB). List the Contracts and HUD Funded Entity and Contact:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	<p><b>2.</b> I complied with Section 3 by employing at least 30% of my workforce. List the Contracts and HUD Funded Entity and Contact:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	<p><b>3.</b> I complied with Section 3 by subcontracting 25% of the total dollar award to a qualified Section 3 Business. List the Contracts and HUD Funded Entity and Contact:</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p><b>4.</b> I complied with Section 3 on a previous HUD funded contract by doing these things and with these entities: Describe:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	<p><b>5.</b> I completed HUD Section 3 covered contracts in the past three years but was not required to meet compliance.</p> <p>Check the box of the corresponding reason below.</p> <p><input type="checkbox"/> I did not trigger the regulation by hiring any new employees on my Previous contract(s) in violation of the Section 3 regulation.</p> <p><input type="checkbox"/> I did not trigger the regulation by hiring any contractors on previous, contract(s) in violation of the Section 3 regulation.</p>	

6.  I certify that I have not performed previous Section 3 covered contracts

-----  
Signature

-----  
Print Name

-----  
Date



SECTION 3 SELF-CERTIFICATION AND SKILLS DATA FORM

**Certification for Section 3 Residents or other Low-Income Persons Seeking Employment, Training or Contracting**

Eligibility for Preference

A Section 3 resident seeking the preference in training and employment provided by this part shall certify, or submit evidence to the recipient contractor or subcontractor, if requested, that the person is a Section 3 resident, as defined in Section 135.5. (An example of evidence of eligibility for the preference is evidence of receipt of public assistance, or evidence of participation in a public assistance program).

I, \_\_\_\_\_, am legal resident of the United States and meet the income eligibility and federal guidelines for a Section 3 Resident as defined on the next page.

My home address is:

Must be a <b>Street</b> address not a P O Box #			Apt Number	
City	State	Zip	Home #	Cell #

I have attached the following documentation as evidence of my status:

___ Copy of lease	___ Copy of recipient of public assistance
___ Copy of Evidence of Participation In a public assistance program	___ other evidence: _____

Graduated High School or GED (month/year) _____	I Read and Speak English Fluently Yes or No		
Attended College, Trade, or Technical School ___ Yes/No	Graduated ___ Yes/No Year Graduated _____		
<b>Check the Skills, Trades, and/or Professions you have been employed in or contracted to do for others:</b>			
<input type="checkbox"/> Drywall Hanging	<input type="checkbox"/> Drywall Finishing	<input type="checkbox"/> Interior Painting	<input type="checkbox"/> Framing
<input type="checkbox"/> HVAC	<input type="checkbox"/> Electrical	<input type="checkbox"/> Interior Plumbing	<input type="checkbox"/> Exterior Plumbing
<input type="checkbox"/> Siding	<input type="checkbox"/> Cabinet Hanging	<input type="checkbox"/> Door Replacement	<input type="checkbox"/> Trim/Carpentry
<input type="checkbox"/> Stucco	<input type="checkbox"/> Window/Door Repl.	<input type="checkbox"/> Construction Cleaning	<input type="checkbox"/> Exterior Framing



- |   |  |  |   |
|---|--|--|---|
| <input type="checkbox"/> Data Entry     | <input type="checkbox"/> Receptionist      | <input type="checkbox"/> Sales                 | <input type="checkbox"/> Telephone Customer Service |
| <input type="checkbox"/> Administrative | <input type="checkbox"/> Teaching/Training | <input type="checkbox"/> Personal Care Aid     | <input type="checkbox"/> Landscaping                |
| <input type="checkbox"/> CDL License    | <input type="checkbox"/> Roofing           | <input type="checkbox"/> Concrete/Asphalt Work | <input type="checkbox"/> Heavy Equipment Operator   |
| <input type="checkbox"/> Fencing        | <input type="checkbox"/> Metal/Steel Work  | <input type="checkbox"/> Welding               | <input type="checkbox"/> Other _____                |

**Continued in other page**

I am certifying as a Section 3:  **Person seeking Training** or  **Person seeking employment**

(Check all that apply):

- I am a public housing leaseholder**
- I am a Section 8 leaseholder**
- I live in the service area of the Authority (El Paso, TX)**

My total annual household income is \$\_\_\_\_\_ There are a total of \_\_\_\_\_ people living in my household

I certify that all of the information given above is true and correct. If found to be inaccurate, I understand that I may be disqualified as an applicant and/or a certified Section 3 individual which may be grounds for termination of training, employment, or contracts that resulted from this certification. I attest under penalty of perjury that my total household income annually, based on my total household size as listed above is at or below the income amount for that specific size at the time of this document is being signed. I understand that proof of this statement may be requested in the future.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date



### FY 2016 Income Limits Summary

FY 2016 Income Limit Area	Median Income <a href="#">Explanation</a>	FY 2016 Income Limit Category	Persons in Family							
			1	2	3	4	5	6	7	8
El Paso County	\$45,400	Very Low (50%) Income Limits (\$) <a href="#">Explanation</a>	18,350	21,000	23,600	<b>26,200</b>	28,300	30,400	32,500	34,600
		Extremely Low Income Limits (\$)* <a href="#">Explanation</a>	11,880	16,020	20,160	<b>24,300</b>	28,300*	30,400*	32,500*	34,600*
		Low (80%) Income Limits (\$) <a href="#">Explanation</a>	29,350	33,550	37,750	<b>41,900</b>	45,300	48,650	52,000	55,350



As part of the Housing and Urban Development's (HUD) Section III initiative for providing employment opportunities for public housing residents, the Engineer will identify construction labor opportunities that may be performed by skilled and unskilled residents.

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

- A. The work to be performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance of HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons, who are recipients of HUD assistance for housing.
- B. The parties to this Contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with part 135 regulations.
- C. The Contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 Clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 reference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and anticipated date the work shall begin.
- D. The Contractor agrees to include this Section 3 Clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 Clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- E. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the Contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- F. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this Contract for default, and debarment of suspension from HUD assisted contracts.





**PREFERENCE FOR SECTION 3 BUSINESS CONCERNS IN CONTRACTING OPPORTUNITIES:**

Order of providing preference:

Contractor and subcontractor shall direct their efforts to award Section 3 covered contracts, to the greatest extent feasible, to Section 3 business concerns in the following order of priority:

1. Public and Indian housing programs. In public and Indian housing programs, efforts shall be directed to award contracts to Section 3 business concerns in the following order of priority:
  - a. Business concerns that are 51% percent or more owned by residents of the housing development or developments for which the Section 3 covered assistance is expended, or whose full-time, permanent workforce includes 30% percent of these persons as employees (category 1 businesses);
  - b. Business concerns that are 51% percent or more owned by residents of other housing developments or developments managed by the HA that is expending the Section 3 covered assistance, or whose full-time, permanent workforce includes 30% percent of these persons as employees (category 2 businesses); or
  - c. HUD Youthbuild programs being carried out in the metropolitan area (or Non- metropolitan county) in which the Section 3 covered assistance is expended (category 3 businesses).
  - d. Business concerns that are 51% percent or more owned by Section 3 residents, or whose permanent, full-time workforce includes no less than 30% percent Section 3 residents (category 4 businesses), or that subcontract in excess of 25% percent of the total amount of subcontracts to Section 3 business concerns.

Housing and community development programs. In housing and community development programs, priority considerations shall be given, where feasible, to:

- a. Section 3 business concerns that provide economic opportunities for Section 3 residents in the service area or neighborhood in which the Section 3 covered project is located (category 1 businesses); and
- b. Applicants (as this term is defined in 42 U.S.C. 12899) selected to carry out HUD Youthbuild programs (category 2 businesses);
- c. Other Section 3 business concerns.

Eligibility to preference.

A business concern seeking to qualify for a Section 3 contracting preference shall certify or submit evidence, if requested, that the business concern is a Section 3 business concern as defined in Sec. 135.5.

Ability to complete contract. A section 3 business concern seeking a contract or a subcontract shall submit evidence to the Contractor, or subcontractor (as applicable), if requested, sufficient to demonstrate to the satisfaction of the party awarding the contract that the business concern is responsible and has the ability to perform successfully under the terms and conditions of the proposed contract. (The ability to perform successfully under the terms and conditions of the proposed contract is required of all Contractors and subcontractors subject to the procurement standards of 24 CFR 85.36 (see 24 CFR 85.36 (b)(8)). This regulation requires consideration of, among other factors, the potential Contractor's record in complying with public policy requirements. Section 3 compliance is a matter properly considered as part of this determination.



Solicitation: Third Party Administration of Group Benefit Plans

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## **PART III**

# **DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS**



Solicitation: Third Party Administration of Group Benefit Plans

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## **SECTION E**

### **LIST OF ATTACHMENTS**



**FORM OF NON-COLLUSIVE AFFIDAVIT  
PRIME OFFEROR**

State of Texas  
County of El Paso

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

**That he is \_\_\_\_\_ (state whether a partner or officer of the firm, corp., etc.) of the party making the foregoing proposal 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 which he received payment, other than persons regularly employed by the affiant whose services 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, corporation, firm, association, or other than the payment of their normal compensation to persons regularly employed by the affiant whose service in connection with the project were in the regular course of their duties for affiant.
3. That such proposal is genuine and not collusive or sham; that said offeror has not colluded, conspired, connived, or agreed, directly or indirectly, with any offeror or person, to put in a sham offer or to refrain from submitting an offer and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix to any overhead profit or cost element of said price, or of that of any other offeror, or to secure any advantage against the Housing Authority of the City of El Paso, Texas, or any person interested in the proposed contract, and that all statements in said proposal are true.

: \_\_\_\_\_  
Signature of Offeror if Offeror  
is an individual

: \_\_\_\_\_  
Signatures of all partners if  
Offer is a partnership

: \_\_\_\_\_  
Signature of Corporate Principal if Offeror is  
a corporation

**Subscribed and sworn to before me**

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.  
My Commission expires \_\_\_\_\_, 20\_\_\_\_\_.



**CERTIFICATION OF  
EQUAL EMPLOYMENT OPPORTUNITY  
AGREEMENT**

I \_\_\_\_\_  
(Official's Name) (Title)

of the \_\_\_\_\_ do hereby certify that I have read and understand the EEO requirements throughout the life of this contract.

Attachment of this executed form, as such, is required to complete a valid bid/proposal.

For Project: \_\_\_\_\_

Job to be Performed: \_\_\_\_\_

\_\_\_\_\_  
Official's Signature

\_\_\_\_\_  
Date



**FEDERAL LABOR STANDARDS CERTIFICATION**

I, \_\_\_\_\_, the Offeror, certify that I and all subcontractors involved in the proposed contract will comply with Federal Labor Standards and prevailing wage rates.

\_\_\_\_\_  
Signature of Offeror if Offeror is an individual  
Signature of all partners of Offeror is a partnership

\_\_\_\_\_  
Company

\_\_\_\_\_  
Date



### AGREEMENT TO CONTRACT ELECTRONICALLY

#### PARTIES:

1. The parties to this agreement are the Housing Authority of the City of El Paso (HACEP) with its principals place of business at 5300 E. Paisano Dr. El Paso, Texas 79905 and \_\_\_\_\_, (herein known as "Contractor") a corporation/other with its principal place of business at \_\_\_\_\_ (address).

#### METHOD OF CONTRACTING:

2. The parties intend to enter into a contact that will be completed electronically. The parties agree that their communications will consist of emails and other communication methods as appropriate.

The following hardware and software are needed to allow these transactions:

#### RECEIPIENT (SIGNER) REQUIREMENTS

Operations Systems: Windows XP, Windows Vista, Windows 7; Mac OS X

Browsers: Final release versions of Internet Explorer 7.0 or above (Windows only); Mozilla Firefox 3.0 or Mobile Signing: Apple iOS 4.0 or above. Android 2.2 or above.

PDF Reader: Acrobat® or similar software may be required to view and print PDF files.

Screen Resolution: 1024 X 768 minimum.

Enabled Security Settings: Allow per session cookies.

#### SECURITY:

3. In order to ensure the security of the transaction(s), the following procedures will be employed: the contract and subsequent contract modifications will be signed with the digital signature of a company representative that will be encrypted to bank grade security. DocuSign will be the company website retained to process electronic signatures on the above-mentioned documents. Documents stored in DocuSign's ISO 27001 and SSAE 16 data centers are encrypted with the AES-256 standard and use 256-bit SSL document transmission. Further information regarding DocuSign's security can be found at <https://www.docusign.com/how-it-works/security>.

#### REVOCAATION:

4. The parties acknowledge that the signing of this agreement binds them to conduct the transaction that is the subject of the agreement electronically, but that they are not bound to use electronic means in connection with any future transactions.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Gerald Cichon  
Chief Executive Officer





### STATEMENT OF OFFEROR'S QUALIFICATIONS

All questions must be answered and the data given must be clear and comprehensive. This statement must be notarized. If necessary, questions may be answered on separate attached sheets. The Offeror may submit any additional information he/she desires.

1. Name of Firm (Legal Name)

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a. Name of President:

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2. Permanent main office address. Including city, state and zip code, main phone number.

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3. When organized (year).

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4. If a Corporation, where incorporated.

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

Name: \_\_\_\_\_

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

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

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



(Please attach sheets if more than one person is authorized to negotiate on the firm's behalf)

5. How many years have you been engaged in practice under your present firm name?

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6. Contracts on hand: (schedule this showing gross amount of each contract and the appropriate anticipated dates of completion.)

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7. General character of work performed by your company.

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8. Have you ever failed to complete any work awarded to you? If so, where why? (Be specific and attach separate sheets if needed)

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9. Have you ever defaulted on a contract? If so, where and why? (Be specific, attach separate sheet if needed.)

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10. List the more important contracts recently completed by you, stating approximate gross cost for each, and the month and year completed.



11. List your major areas of expertise and resources available for this contract.

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12. Experience in this type of work similar in size to this project.

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13. Background and experience of the President, principal members of your organization and officers. (Attach separate sheets.)

14. Please attach a letter from your bank (on bank letterhead) referencing the following information: Is your account in good standing? What year was the account established? What is the account balance (\$50,000 can be expressed as mid-five figures)?

15. Attach letters of reference from (3) firms that do business with your company, (strictly those firms who have awarded contracts to your company).

16. Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the Housing Authority of the City of El Paso, Texas?

YES  NO

a. Have you ever been a party to or otherwise involved in any action or legal proceeding involving matters related to race, color, nationality, sex, disability, age or religion? If so, give full details. (Attach separate sheets.)

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b. Have you ever been accused of discrimination based upon race, color, nationality, sex, disability, age, or religion in any action or legal proceeding including any



# Housing Authority of the City of El Paso

Solicitation: Third Party Administration of Group Benefit Plans

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proceeding related to any Federal Agency? If so, give full details. (Attach separate sheets.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

17. Do you provide safety training for your employees? \_\_\_\_\_ Please attach details.

18. The undersigned hereby authorized and request any person, firm or corporation to furnish any information requested by the Housing Authority of the City of El Paso, Texas in verification of the recitals comprising this Statement of Offeror's Qualifications.

Date \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Name of Offeror)

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

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

State of \_\_\_\_\_)

City/County of \_\_\_\_\_) <sup>ss</sup>

\_\_\_\_\_ Being duly sworn,  
deposes

and says that he/she is the \_\_\_\_\_ 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 of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Notary Public)

My Commission Expires \_\_\_\_\_.



## Certification Regarding Debarment and Suspension

### U.S. Department of Housing and Urban Development

#### Certification A: Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief that its principals;

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal debarment or agency;

b. Have not within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

d. Have not within a three-year period preceding this application/ proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

#### Instructions for Certification (A)

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the

department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.



4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of these regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification

Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines this eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph (6) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.



**Certification B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**Instructions for Certification (B)**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of these regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph (5) of these instructions, if a participant in a lower covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies including suspension and/or debarment.

Applicant	Date
Signature of Authorized Certifying Official	Title





**DISCLOSURE OF LOBBYING ACTIVITIES**

Approved by OMB

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

0348-0046

(See reverse for public burden disclosure.)

<input type="checkbox"/> <b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance		<input type="checkbox"/> <b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application b. initial award c. post-award		<input type="checkbox"/> <b>3. Report Type:</b> <input type="checkbox"/> a. initial filing b. material change <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____	
<b>4. Name and Address of Reporting Entity:</b> Prime                      Subawardee Tier _____, <i>if known</i> :  Congressional District, <i>if known</i> :			<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b>  Congressional District, <i>if known</i> :		
<b>6. Federal Department/Agency:</b>			<b>7. Federal Program Name/Description:</b>  CFDA Number, <i>if applicable</i> : _____		
<b>8. Federal Action Number, if known :</b>			<b>9. Award Amount, if known :</b> \$ _____		
<b>10. a. Name and Address of Lobbying Registrant</b> <i>( if individual, last name, first name, MI ):</i>			<b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a ) (last name, first name, MI ):</i>		
<b>11.</b> Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.			Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____		
<b>Federal Use Only:</b>				Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)	



## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity 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 covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.



Solicitation: Third Party Administration of Group Benefit Plans

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**PART IV**  
**REPRESENTATIONS AND**  
**INSTRUCTIONS**



Solicitation: Third Party Administration of Group Benefit Plans

RFP#: HR 17-R-0020

## **SECTION F**

### **REQUIRED CERTIFICATIONS**



Solicitation: Third Party Administration of Group Benefit Plans

RFP#: HR 17-R-0020

## Certifications and Representations of Offerors

U.S. Department of Housing and Urban Development

OMB Approval No: 2577-0180 (Gxp. 7130/96)

Office of Public and Indian Housing

### Non-Construction Contract

Public reporting burden for this collection of information is estimated to average 0.08 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0180), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. @ 20410-3600@

Do not send this form to the above address.

#### 1. Contingent Fee Representation and Agreement

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

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

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

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

are controlled by one or more such individuals. For the purpose of this definition, minority group members are:

(Check the block applicable to you)

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

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

- (a)  is,  is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 12.1.
- (b)  is,  is not a women-owned small business concern. "Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.
- (c)  is,  is not a minority enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 per cent of its voting stock is owned by one or more minority group members, and whose management and daily operations



**3. Certificate of Independent Price Determination**

- (a) The bidder/offeror certifies that-
  - (1) The prices in this bid/offer have been arrived at independently, without, for the purpose of restricting competition. any consultation, communication, or agreement with any other bidder/offeror or competitor relating to (i) those prices, (ii) the intention to submit a bid/offer, or (iii) the methods or factors used to calculate the prices offered-
  - (2) The prices in this bid/offer have not been and will not be knowingly disclosed by the bidder/offeror, directly or indirectly, to any other bidder/offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
  - (3) No attempt has been made or will be made by the bidder/offeror to induce any other concern to submit or not to submit a bid/offer for the purpose of restricting competition.
- (b) Each signature on the bid/offer is considered to be a certification by the signatory that the signatory:
  - (1) Is the person in the bidder/offeror's organization responsible for determining the prices being offered in this bid or proposal,
    - Black Americans
    - Asian Pacific Americans
    - Hispanic Americans
    - Asian Indian Americans
    - Native Americans
    - Hasidic Jewish Americans

- and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
- (2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above (insert full name of person(s) in the bidder/offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offeror's organization);  
(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and  
(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.
- (c) If the bidder/offeror deletes or modifies subparagraph (a)2 above, the bidder/offeror must furnish with its bid/offer a signed statement setting forth in detail the circumstances of the disclosure.

**4. Organizational Conflicts of Interest Certification**

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



or other interest are such that:

- (i) Award of the contract may result in an unfair competitive advantage;
  - (ii) The Contractor's objectivity in performing the contract work may be impaired; or
  - (iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.
- (b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract for the convenience of HA if it would be in the best interest of HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this Contract and intentionally did not disclose the conflict to the HA, the HA may terminate the Contract for default.
- (d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract. -

**5. Authorized Negotiators (RFPs only)**

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

**6. Conflict of interest**

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

**7. Offeror's Signature**

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

\_\_\_\_\_  
Signature & Date:

\_\_\_\_\_  
Typed or Printed Name:

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

\_\_\_\_\_





Solicitation: Third Party Administration of Group Benefit Plans

RFP#: HR 17-R-0020

**SECTION G**  
**INSTRUCTIONS TO OFFERORS**



*Instructions to Offerors Non-Construction*

**U.S. Department of Housing and Urban Development**

Office of Public and Indian Housing- 03291 -

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**1. Preparation of Offers**

ability to obtain them;

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

**2. Submission of Offers**

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

**3. Amendments to Solicitations**

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

**4. Explanation to Prospective Offerors**

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

**5. Responsibility of Prospective Contractor**

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



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

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

**6. Late Submissions, Modifications, and Withdrawal of Offers**

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

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

excludes weekends and U.S. Federal holidays; or

(4) Is the only offer received.

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

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

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

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



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

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

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

#### 7. Contract Award

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

(b) The HA may

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

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

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

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

#### 8. Service of Protest

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

#### 9. Offer Submission

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

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



**PART IV – REPRESENTATIONS AND**

**INSTRUCTIONS SECTION G**

**INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS**

**G-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE**

<u>FAR NO.</u>	<u>PROVISION TITLE</u>	<u>DATE</u>
52.215-1	Instructions to Offerors – Competitive Acquisition	OCT 1987
52.216-1	Type of Contract	APR 1984
G-2	All proposals must be mailed or delivered to: Housing Authority of the City of El Paso, Texas 5300 E. Paisano Dr.  El Paso, Texas 79905	

**NOTE: It is the vendor’s sole responsibility to see that his/her proposal is received at the proper place on time.**

G-3 If any prospective vendor is in doubt as to the true meaning of any portion of the proposal documents or requires any additional information to prepare his/her proposal response, he/she shall contact, in writing, to the Contracts Division at the above referenced address no later than 7 days before the closing date of the solicitation.

G-4 Proposals shall be dated with each page numbered and displaying the offeror’s identification. Signatures required shall be in longhand and by those authorized to execute an eventual contract.

G-5 No oral, telegraphic, or telephonic proposals or modifications will be considered.

G-6 The completed proposal shall answer all questions on a point-by-point basis in a concise manner, avoiding ambiguous statements and shall be without interlineations, alterations, and erasures.

G-7 All deviations to the proposal Statement of Work or any items or features that cannot or should not be solicited must be specifically identified. If no such areas of controversy are identified, the proposal should so state and it shall be understood that all items, features and costs have been included.

G-8 If the offeror is unable to comply with a requirement but is uncertain to the specific nomenclature in any specification, it shall enter a reference number of any supporting documents, etc., describing or interpreting the requirement.

G-9 All statements made by the offeror must be capable of being included into a written contract.

G-10 All documentation submitted automatically becomes the property of the Housing Authority of the City of El Paso, Texas.

G-11 Expenses for proposal development are entirely the responsibility of the offeror and will not be chargeable in any manner to the Housing Authority of the City of El Paso, Texas.

G-12 The Housing Authority of the City of El Paso, Texas reserves the right to accept or reject any proposal, or any part of a proposal. Any resulting order will be awarded to that responsive, responsible offeror, whose proposal is most advantageous to the Housing Authority of the City of El Paso, Texas, all other factors considered.

G-13 Offeror must submit proof of all insurance coverages and be prepared to provide additional proof of same



should the Housing Authority of the City of El Paso, Texas so request.

**G-14** Offeror must provide financial information, including bank references, annual report, and a detailed financial statement at the request of HACEP.

**G-15** All offers will be evaluated according to the criteria listed in the proposal. To be considered responsive the offer must respond to the criteria.

**G-16 PROTEST TO THE AGENCY**

(a) When a protest is filed with the agency, an award shall not be made until the matter is resolved unless the Director of Contracting or other designated official first determines that one of the following applies:

- (1) The supplies or services to be contracted for are urgently required.
- (2) Delivery or performance will be unduly delayed by failure to make award promptly.
- (3) A prompt award will otherwise be advantageous to the Housing Authority of the City of El Paso, Texas.

**G-17 (52.252-1) SOLICITATIONS PROVISIONS INCORPORATED BY REFERENCE (JUNE 1988)**

This solicitation incorporates one or more solicitation provisions by reference with the same force and effect as if they were given in full text. Upon request, the Director of Contract Compliance will make their full text available.

**G-18 AWARD**

The Housing Authority of the City of El Paso, Texas, at its discretion, may award multiple contracts for this requirement.

**G-19 INCURRING COSTS**

(a) Costs shall not be incurred by receipts of the solicitation document in the anticipation of receiving direct reimbursement from the Housing Authority of the City of El Paso, Texas without the written authorization of the proper authority.



- (b) The Housing Authority of the City of El Paso, Texas assumes no liability for and shall not be obligated to the Contractor for payment for the Contractor's costs incurred prior to award.

**G-20 PRE-AWARD SURVEY OF PROSPECTIVE CONTRACTOR**

- (a) If an offer submitted in response to this solicitation that is favorably considered, a survey team may contact your facility to determine your ability to perform. Current financial statements and other pertinent data should be available for review at that time if not already on file with the office having cognizance over your facility. Areas that may be investigated or evaluated are listed below:
  - 1. Technical Capability
  - 2. Facilities
  - 3. Financial Capability
  - 4. Accounting System
  - 5. Quality Assurance
  - 6. Performance record
- (b) Offerors are advised that accomplishment of this survey is a part of the evaluation process and is not to be construed as an indication that an will receive or is in the best position to receive the resultant award.
- (c) The Housing Authority of the City of El Paso, Texas may conduct a pre-award survey on more than one at a time.

**G – 21 FAILURE TO SUBMIT OFFER**

Recipients of this solicitation not responding with an offer should not return this solicitation, unless it specifies otherwise. Instead, they should advise the issuing office by letter, postcard, or established electronic commerce methods, whether they want to receive future solicitations for similar requirements. If a recipient does not submit an offer and does not notify the issuing office that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

**G-22 (9505) ORGANIZATIONAL CONFLICTS OF INTEREST**

The Contracting Officer shall award the contract to the apparent successful offeror unless a conflict of interest is determined to exist that cannot be avoided or mitigated.





Solicitation: Third Party Administration of Group Benefit Plans

RFP#: HR 17-R-0020

**SECTION H**

**EVALUATION FACTORS FOR AWARD**



## **CONTRACT AWARD**

Only written proposals will be considered. HACEP reserves the right to reject any proposals without further discussion or negotiations, and may waive technical errors or discrepancies if it serves the public interest. This solicitation for proposals is not to be considered a contract of any kind.

Written proposals will be reviewed, with emphasis on capacity and services proposed. Negotiations (interviews) may be conducted with all Offerors in the acceptable range, at the discretion of the Housing Authority of the City of El Paso, Texas. All Offerors in the competitive range will be asked to submit their Best and Final Offer. Thereafter, a recommendation for award of contract will be made to the Board of Commissioners. Upon approval by the HACEP Board of Commissioners, a contract will be awarded. HACEP reserves the right to exclude identified services from the contract and to award more than one contract.

After demonstrating full compliance with federal regulations at 24 CFR Part 85, Administrative Requirements (Federal Procurement, Competitive Negotiation Standards) and with all required approvals, HACEP will prepare a final contract document for execution and approval by the Contracting Officer and the contracting party.

No contract will be awarded for proposals that do not meet the satisfaction of the Board of Commissioners. Any contract awarded as a result of this Request for Proposals will be made only for the term outlined in the RFP. HACEP reserves the right to cancel unilaterally any contract derived from this Request for Proposals for failure to perform services satisfactorily. Any contract for the stated services or products herein is not an exclusive contract. HACEP reserves the right to assign other service providers to such matters as it deems necessary.

## **AFFIRMATIVE ACTION**

HACEP is an equal opportunity employer and requires all of its contractors to comply with policies and regulations concerning equal employment opportunity. Proposals should refer to affirmative action guidelines published by the Department of Housing and Urban Development regarding minority, women-owned, handicapped, and small business enterprises. In addition, HACEP requests information regarding the ethnicity of each partner, shareholder, and personnel employed by the company.



## **BASIS FOR AWARD**

The Housing Authority of the City of El Paso, Texas will award this contract to the most qualified Offeror based on experience in the stated services as designated in the scope of services and fees negotiated.

The Housing Authority of the City of El Paso, Texas reserves the right to consider historic information and facts, whether gained from the firm's proposal, question and answer conferences, references or any other source in the evaluation.

The individual or firm is cautioned that it is the individual's or firm's sole responsibility to submit information related to the evaluation categories and the Housing Authority of the City of El Paso, Texas is under no obligation to solicit such information if it is not included with the individual's or firm's statement. Failure of an individual or firm to submit such information may cause an adverse impact on the evaluation of the individual or firm or lead to disqualification from consideration.



## TECHNICAL EVALUATION

### WORK SHEET

Name: \_\_\_\_\_

Reviewer: \_\_\_\_\_

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

**INSTRUCTIONS:** Evaluation of technical proposals will be based upon an analysis of the Offeror's proposal in relation to the criteria contained in the request for proposal. This evaluation sheet is keyed to those criteria. Reviewers should record their evaluation of each proposal in terms of its strengths and weaknesses, the degree to which the proposal possesses or lacks the attributes set forth in the specific factors for award Points scores are to be assigned to each evaluation factor as indicated below. Reviewer's comments should be provided on this form. Additional sheets may be attached as necessary.

**OVERALL SCORE:** Evaluation sheets are provided for assistance in evaluated factors and weights contained in the **RFP**. Predetermined cut-off scores designed for determining overall rating shall not be employed.

### **COMPOSITE SCORE:**

**STRENGTHS/WEAKNESSES:** (Evaluators should comment here on strengths/weakness of the technical proposal. Comments maybe used to formulate the Housing Authority of the City of El Paso, Texas position if continued negotiations are required).

**Acceptable:** \_\_\_\_\_

("This means that based upon the proposal as submitted, the PHA could contract with the offeror and expect that the work would be completed. The proposal is not perfect, but it contains no significant weaknesses")

**Potentially Acceptable:** \_\_\_\_\_

("This means that the technical part of the proposal contains weaknesses that keep it from being acceptable, but with relatively minor changes or additional information from the offeror, it might be made acceptable. Once additional information is obtained via initial negotiations, this type of proposal must become either acceptable or unacceptable")

**Unacceptable:** \_\_\_\_\_

("This means that the proposal is seriously flawed to the point that no amount of negotiation would lead to improve it, or the offer would have to be substantially rewritten to be found acceptable. Either the offeror simply did not understand the PHA's requirement or did not elect to prepare a sufficient proposal. Technically unacceptable proposals should never be included in a competitive range")



**Effective July 1, 2014, the Housing Authority of the City of El Paso (HACEP) implemented the following guidelines applicable to all contractor business travel.**

HACEP will reimburse based on the **GSA Per Diem Rates** [www.gsa.gov/perdiem](http://www.gsa.gov/perdiem) for the City of El Paso, TX:

- Lodging
- Meals and Incidentals Expenses

The following categories define HACEP expectations for Contractor travel and meal expenses. Proper documentation must be submitted with the Contractor invoice before HACEP will consider reimbursement of travel or meal expenses. Such documentation must include detailed receipts for all requested amounts and the valid business reason for the expense. In addition, where HACEP management approval is required prior to reimbursement, Contractor must submit a memo detailing management's approval or the signature of the appropriate HACEP management representative on the detailed receipt. HACEP reserves the right to request additional information when assessing payment and may refuse or limit payment based on the documentation, or lack thereof, provided.

- **Airfare** - Airfare is reimbursed at commercial Coach Class using lowest logical airfare and advance purchase options. Airfare should be booked as soon as practical to obtain best pricing options. HACEP allows non-stop service to be considered as lowest logical airfare. HACEP will not reimburse unused tickets, airport ticket class changes, or seat location upgrades. Use of non-commercial air service is expressly prohibited.
- **Tolls and Parking** – Parking will be reimbursed at actual cost for business trip expense. Commuter tolls and parking within city metropolitan area where work is performed is not reimbursable.
- **Transportation Services** - While scheduled transportation service using airport shuttles is permitted with proper receipts, private limousine or luxury shuttle service is **not reimbursable**. Taxi service is allowed in lieu of auto rental, however receipts must be provided.
- **Personal Vehicle** - Use of a personal vehicle in lieu of public transportation or a rental car is permitted when pre-approved by HACEP management. Mileage must be tracked on a daily trip log and reimbursement will be calculated at IRS standard mileage rates. Reported mileage must exclude normal commute mileage in accordance with IRS commute definitions. No personal vehicle expense, including gasoline or car repairs, is allowed for reimbursement.
- **Entertainment** - Casual entertainment including alcoholic beverages is **not reimbursable**. HACEP management must pre-authorize any scheduled group events and such events must be limited to specific milestone or project recognition events. HACEP will not reimburse Contractor for entertaining HACEP employees without prior HACEP management approval.

Sincerely,

Satish Bhaskar

HACEP Chief Financial Officer

I certify that I have Read and acknowledge HACEP's Travel/expense Guidelines.

Name and title: \_\_\_\_\_

date: \_\_\_\_\_



**Vendor Information Form**

Firm Name	
Firm Address (full address):	
Firm Telephone Number:	
Firm Fax Number	
Firm Year Established:	
Types of services provided by the Firm	
Federal TAX ID #	

Management person responsible for direct contact with the HACEP and services required for this Request for Proposal (RFP):

Name:	
Title:	
Telephone Number:	
Fax:	
Email:	

Person responsible for day-to-day servicing of the account:

Name:	
Title:	
Telephone Number:	
Fax:	
Email:	