



RFP: RAD 18-R-0031
Developer Services for Blue Flame Building

The Housing Authority of the City of El Paso, Texas

Requests Proposals for:

Developer Services for Blue Flame Building

Solicitation No. RAD 18-R-0031

<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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REQUEST FOR PROPOSALS (RFP)

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

Developer Services for Blue Flame Building

Request for Proposal will be available online at 10:00 A.M. Mountain Daylight Time (MDT) beginning **August 4, 2017**, To view the solicitation. **Refer to Request for Proposal No. RAD 18-R-0031**. This solicitation is only available electronically. To view the solicitation, please visit 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 August 16, 2017 at 2:00 P.M. MDT at 5300 E. Paisano Dr. Any questions regarding the RFP may be directed to Ms. Eddie Rocha, at (915) 849-3789 or erocha@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 August 25, 2017 at 2:00 P.M. MDT. All proposals shall be submitted in "Sealed Envelopes" and may be delivered or hand carried to: Housing Authority of the City of El Paso Texas, Attn: Ms. Eddie Rocha, Contract Specialist, 5300 E. Paisano Dr., El Paso, Texas, 79905-2051.

A handwritten signature in blue ink, appearing to read "Juan Pulido", is written over a horizontal line.

Juan Pulido
Procurement Manager

Advertisement
El Paso Times:

Friday: August 4, 2017
Friday: August 11, 2017



Executive Summary Notice Request for Proposal (RFP)

Solicitation No.: RAD 18-R-0031

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 for Blue Flame Building. 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 for Blue Flame Building. 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 **August 17, 2017, at 5:00 p.m.** local time and directed to **Eddie Rocha** Contract Specialist, at erocha@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 (4) 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

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Date Issued: August 4, 2017
Subject: Request for Proposal (RFP)

Solicitation No.: RAD 18-R-0031

Separate sealed proposals for Developer Services for Blue Flame Building 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 3:00 p.m., local time, August 25, 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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***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 18-R-0031
3. Type of Solicitation
 Sealed Bid (IFB)
 Negotiated (RFP)
4. Date issued : August 4, 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: **Eddie Rocha,** Telephone No.: **(915) 849-3789**

Technical questions may be emailed to erocha@hacep.org no later than August 17, 2017 @ 5pm local time.

(X)	SEC.	DESCRIPTION	PAGES	(X)	SEC.	DESCRIPTION	PAGES
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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
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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
Offeror acknowledges receipt of amendment(s)

(Must be completed by Offeror)

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

AWARD (To be completed by Authority)

16. Accepted as to items numbered:	17. Amount:
18. Submit invoices to: Accounting and Finance Department accountspayable@hacep.org Attn: Accounts Payable HACEP 5300 E. Paisano Dr. El Paso, Texas 79905 – 2931	19. Technical Representative Name: <u>Tom Delove</u> Telephone No. <u>915-849-3813</u>
20. Administered by: Procurement and Contract Compliance Department HACEP 5300 E. Paisano Dr. El Paso, Texas 79905 – 2931 (915) 849-3776	21. Payment will be made by: Accounts Payable Department HACEP 5300 E. Paisano Dr. El Paso, Texas 79905 – 2931 (915) 849-3742
22. Name of Contracting Officer (Type or Print) <u>Gerald Cichon, Chief Executive Officer</u>	23. Signature of Contracting Officer:
Award Date:	IMPORTANT: 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



RFP: RAD 18-R-0031
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REQUEST FOR PROPOSALS FOR
Developer Services for Blue Flame Building

RAD 18-R-0031

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 co-developer (“Developer”) to assist HACEP in the design, financing, provision of guarantees, and adaptive reuse of the historic building located in downtown El Paso, TX and commonly known as Blue Flame, using 9% low income housing tax credits (LIHTC) awarded by Texas Department of Housing and Community Affairs (TDHCA) to HACEP on July 27, 2017 and use of historic tax credits (HTC).

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 (LIHTC) and traditional or FHA 221 (d) 4 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 would be required instead of standard local Fair Market Rents (FMRs).**

Utilizing the RAD program, HACEP is renovating or rebuilding substantially its entire portfolio of about 6,300 public housing units in a program that started in 2015 and is expected by HUD to be substantially complete at the end of 2020. Approximately 1,600 units have been converted by HACEP 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 site 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, historic 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 co-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 in LIHTC, HTC and adaptive reuse projects 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.

Further activity following this solicitation is contingent upon HACEP’s successful receipt of the awarded LIHTC allocation from TDHCA together with receipt of historic tax credits. Prospective developers may submit a proposal for the renovation of the Blue Flame. HACEP reserves the right, in its sole discretion to select one proposal, and to award none, or the proposal that best meet its needs. Emphasis will be placed on strength of proposal.

HACEP further reserves the right to bundle two or more properties, as appropriate, into a single financial entity with a single financial closing. Selection as a developer for the Blue Flame project applies only to the specific project, and provides no implied assurance of selection on other or future projects by HACEP. Also, the awarded project, if any, to any developer are “award specific” and therefore are non-transferable to other HACEP projects.

Blue Flame Project – The project will be financed using 2017 9% Low Income Housing Tax Credits, Historic Tax Credits, traditional or FHA 221 (d) 4 debt, and other funding including the possibility of 4% Low Income Housing Tax Credits as an additional source, as identified by the developer. The development includes the construction of 150 units of housing including specifically 120 affordable units and 30 market rate units in the Blue Flame building to be acquired by HACEP or the partnership. The development will consist one- and two-bedroom units, retail, and possibly office uses. The final unit configuration will achieve a 1:1 replacement of the existing public housing units located at Pooley Community and relocates tenants through transfer of assistance to the building.

More detailed description is 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, proforma, 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 up to 50% of the predevelopment costs, which will be reimbursed at closing.
- HACEP's instrumentality EP HOME will serve as the property manager for all building.

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 (subject to HACEP approval); 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, required filings and compliance documents.
- 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, and 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.
- Will follow HACEP's Development Procedures Manual (see **Exhibit H**).

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 based on the most favorable terms for each project.
- 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 experienced in LIHTC and HTC projects, 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. HACEP prefers procurement of the qualified general contractor.
- The selected developer will provide genuine and measurable training and employment opportunities to Section 3 individuals.
- The selected developer will ensure significant participation by D/M/WBE (**Exhibit C**) and Section 3 (Attachment #5 of MOU) firms throughout the development by insuring that the D/M/WBE and Section 3 requirements set forth on to this RFP are satisfied.
- HACEP encourages high quality architectural design. The developments will provide amenities commensurate 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 developers submitting a proposal must disclose to HACEP, as part of the response, whether they have been awarded 2017 9% LIHTC allocation.

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 Historic Tax Credit program.
- Experience in adaptive reuse of historic buildings.
- Experience in Green Building techniques.
- Experience developing housing for families, the elderly, and the disabled.
- Expertise in regulatory compliance issues.



- Provide documentation to support developer financial resources and to provide all required guarantees
- Expertise in Section 3, DBE/MBE/WBE, and Davis Bacon compliance.

EXISTING HACEP CONSULTANT TEAM:

HACEP expects the selected developer to select the A/E team for the building. 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, the selected developer will select the historic tax credit consultant.

In addition, HACEP has assembled a team of outside consultants to complete other requirements of the RAD project and including but not limited to:

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

HACEP anticipates that all existing HACEP consultant 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, developer’s will propose the General Contractor fee structure for General Conditions, Profit and Overhead with percentages respectively. Such fee structure shall not exceed 4.5%/1%/4.5% or 10%

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

A. RESPONSE DUE DATE:

Responses must be submitted by **3:00 p.m. on Friday, August 25 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:



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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 Services for Blue Flame Building RAD 18-R-0031**. **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 sealed 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: Eddie Rocha

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 Friday, August 25, 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. Eddie Rocha, erocha@hacep.org and copy Mr. Juan Pulido, jpulido@hacep.org.

All inquiries must be in writing and received according to the instructions above no later than **5:00 p.m. MDT, on Friday, August 17, 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.



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

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 2018 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. Ideally, to focus on the most recently completed historic and adaptive reuse developments, particularly Texas affordable partnerships with public housing authorities for which the Respondent was procured. Information provided 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. HACEP will emphasize developer’s recent high-rise affordable housing adaptive reuse experience.

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 upon selection by HACEP. 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. Fees are not to exceed the 10% level previously specified in this RFP.

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 C.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 C.3.a.

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)

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** and, the General Conditions included as **Exhibit G**.

5. **COMPLETE AND ACCURATE SUBMISSION**

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

Responses 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.

D. INITIAL REVIEW

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.

E. 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 responses.

HACEP will reject the responses 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 (Project Descriptions)

PROJECT BLUE FLAME

Introduction

The Housing Authority of the City of El Paso (“**HACEP**”), in conjunction with its affiliated entities including Paisano Housing Redevelopment Corporation (“**PHRC**”) submitted application(s) to construct and rehabilitate new apartments 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**”). HACEP was desirous of winning tax credits for this project, Blue Flame, and other projects during the Calendar Year 2017 application in the At-Risk Set Aside. HACEP did not compete during the 2017 tax credit cycle in the competitive regional tax-credit pool against private or other developers.

Blue Flame will be a mixed-use and primarily mixed apartment development with affordable and market rate apartments to house a diverse group of residents. HACEP proposed utilizing 9% LIHTC and Historic tax credits and other financing sources to complete redevelopment of Blue Flame and relocate residences from our Pooley Community to Blue Flame. The Blue Flame project, if approved to proceed, would be part of HACEP’s conversion of its public housing units at to be determined locations as part of the federal Rental Assistance Demonstration project (“**RAD**”). As the City of El Paso and others are aware, 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 (“**PBRA**”)), 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.

Blue Flame will support 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 revitalize its downtown, connect its neighborhoods and develop a foundation that 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, Blue Flame addresses the plan’s endeavors, which emphasizes housing in El Paso.

Further Blue Flame will comply with the overall goals to bring sustainable and efficient housing supply to the urban core, preserve significant historic character, and assist in the investment to revitalize El Paso’s downtown and in this case transformation of a vacant building into an animated, walkable and connected link to the greater downtown community. We believe Blue Flame will expand affordable housing opportunities by utilizing new tools, technologies, and partnerships.



Blue Flame’s location, an absolute bulls-eye to the El Paso’s central and revitalizing core will grant opportunities to residents to access museums, cultural affairs, civic buildings, and educational experiences.

The development Blue Flame 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. Blue Flame will provide the City of El Paso with 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, we expect it may incorporate the applicable criteria necessary to obtain LEED Certification. It also promotes infill developments, preserving existing neighborhoods. By utilizing available land as an infill development, preserving an important historic building it promotes affordable downtown housing and deters the need to move to the outskirts of town.

Importantly Blue Flame will have “front door” access to public transportation. Residents will have availability to all major travel corridors including the Rapid Transportation System and planned Trolley. Another component of making transit more accessible is the planned incorporation of bicycle parking and storage that will be separate from nearby automobile parking in structured parking garage. Through this amenity, community residents will be able to capitalize on the network of streets. Making this alternative form of transportation more attractive and dependency on automobiles unwarranted. Many downtown amenities including the central park will also accessible. Overall, the development will promote the concept of live and work closer together, and this is especially valuable for family members who are care providers.

The development of Blue Flame will also aide in the effort to stimulate and enhance economic development in the surrounding area. The construction of Blue Flame will not only revitalize the historic building but protect its character as well. Additionally, through collaboration between the City of El Paso, Workforce Solutions Borderplex, and HACEP, a diverse workforce will be incorporated into the process. Because 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, 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.

Blue Flame’s design will meet the TDHCA criteria of promoting the edification of high quality housing. Unit sizes and features are planned to be enhanced with no additional charge to the residents. The floor plans and property amenities will enhance the overall quality of life for the residents, and may also incorporate Green Building elements.



Residents will be given an opportunity for inclusiveness and afforded an opportunity to access public services, various community assets, exceptional educational opportunities, medical facilities, entertainment venues, outdoor public recreation, religious institutions, post office, convenience store, and many restaurants.

The City of El Paso, the Downtown Management District (“DMD”) and El Paso community supports the development of Blue Flame. Backing for this development continues with the support of various other community organizations such as Project Bravo and the YWCA.

Since the adoption of the first City Plan of El Paso in 1925 by the City, this plan 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 is the 19th largest city in the nation, and importantly ranks as the safest city in the nation. El Paso is the home to Fort Bliss, and 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.

Blue Flame will meet 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. In addition, Blue Flame will be planned to conserve environmental resources, spur economic investment, and reduce the need for infrastructure and services. Blue Flame’s location will offer activities within walking distance, proximity to neighborhood services, and public transportation to alleviate the dependency on automobiles.

Blue Flame will bring stability to downtown not only by building affordable housing, which will include ADA and VHI units, but also by offering different resident programs. The developments will encourage the participation of community associations, including the JWRC Resident Council that today 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. HACEP sponsors the Family Self Sufficiency program, to promote home ownership.

Blue Flame will promote a healthy, productive, and safe community. By example, HACEP partakes in various health fairs. Additionally, HACEP, 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, service animals are welcomed. Enterprise Green Communities or LEED initiatives may be incorporated into the design of this development, thus reducing operational costs and energy consumption.

Blue Flame will comply with environmental regulatory requirements. With the help of various local, state, and federal agencies, the new construction units will ensure the development meets all necessary codes. Through pest control, the communities will be treated for “unwelcomed” guests assisting in hosting a healthy community and surrounding areas.

Recovering from and safe guards to an extreme weather event can be achieved through many ways and our strongest ally is education. Through the help of the resident councils and by hosting health fairs these events



provide education and instruction to the residents to help minimize damage wielded by extreme weather events. Achieving individual resiliency for El Paso residents is an important goal.

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

HACEP History

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. HACEP'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. Upon completion of a RAD conversion, long-term care and maintenance of HACEP's housing portfolio will be provided through the cash-flow structure of each property and will be independent of ultimately the cessation of dwindling Capital Funds.

In 2005, HACEP was awarded by 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 Place development. Construction begun in 2015 and the projects



RFP: RAD 18-R-0031
Developer Services for Blue Flame Building

were completed earlier this year. 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 the top application in the At-Risk set aside, and Sherman Plaza. Closing and construction started earlier this year. Also, in 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 developments receive full support from the City of El Paso and will commence construction in late 2017.

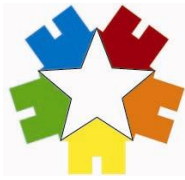


EXHIBIT B (Comparable Projects Experience)

For each project described in Section C.2.b.6. place 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.

	Project 1	Project 2	Project 3	Project 4
NAME:				
Real Estate				
Development Feasibility Studies				
Sale of Real Estate				
Real Estate Redevelopment				
Zoning Approval				
Subdivision Approval				
Site Preparation Work				
Environmental Work				
Dedicated Infrastructure				
Other (specify)				
Financing Employed				
Financial Feasibility Studies				
LIHTC				
HUD RAD				
HOPE VI				
CDBG (also HOME, RHF, etc.)				
FHA Multi-Family Insurance				
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				
Construction Services				
Construction Contractor				
Construction Manager				
Infrastructure Construction				
Design Services				
Property Management				
Marketing Plans				
Property Manager				



	Project 1	Project 2	Project 3	Project 4
Site Maintenance				
Site Security				
Section 3/MBE/WBE				
Dollars Paid as % of Total Development Cost				
# of Persons Employed				
Miscellaneous				
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 managed.
- 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 (DBE/MBE/WBE)

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 requirements 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.

CONTRACT THRESHOLD AMOUNT FOR CONSTRUCTION OR SERVICE CONTRACTS	SECTION 3 INVOLVEMENT AS A % OF TOTAL LABOR DOLLARS
\$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



RFP: RAD 18-R-0031
Developer Services for Blue Flame Building

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

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)
DEVELOPER SERVICES FOR 2018 PROJECTS
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 “**RAD 18-R-0031**”) 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 Attachment #1.

(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 Attachment #2. 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 ventures 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, 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 Attachment #3 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 Attachment #4) 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, if 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 Attachment #5 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. EP Home, 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 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 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 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 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.



(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,



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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, 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 emergencies 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



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

- (a) Attachment #1 – Legal Description
- (b) Attachment #2 – _____, 20__ LIHTC Commitment
- (c) Attachment #3 – [Project Name] Predevelopment Budget
- (d) Attachment #4 – Davis Bacon Wage Rates
- (e) Attachment #5 – 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: _____

By: _____
Name: _____
Title: _____



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ATTACHMENT #1

LEGAL DESCRIPTION

[INSERT]



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

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ATTACHMENT #2

LIHTC COMMITMENT

[ATTACH]



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ATTACHMENT #3

DEVELOPER SERVICES FOR BLUE FLAME BUILDING PREDEVELOPMENT BUDGET

[ATTACH]



ATTACHMENT #4

DAVIS BACON WAGE RATES

General Decision Number: TX170295 04/21/2017 TX295 Superseded General Decision Number: TX2016029
 State: Texas
 Construction Type: Building

County: El Paso County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).
 Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.20 for calendar year 2017 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.20 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2017. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number Publication Date

0 01/06/2017
 1 04/14/2017
 2 04/21/2017

BOIL0074-003 01/01/2017

Rates Fringes

BOILERMAKER..... \$ 28.00 22.35

 ELEC0583-001 12/01/2016

Rates Fringes

ELECTRICIAN (Excludes Low Voltage Wiring and Installation of Alarms/HVAC Temperature Controls)..... \$ 21.88 \$6.97 + 5.25%

 ENGI0178-005 06/01/2014

POWER EQUIPMENT OPERATOR

(1) Tower Crane..... \$ 29.00 10.60

(2) Cranes with Pile Driving or Caisson Attachment and Hydraulic Crane 60 tons and above.... \$ 28.75 10.60

(3) Hydraulic cranes 59 Tons and under..... \$ 27.50 10.60

 IRON0084-011 06/01/2015

IRONWORKER, ORNAMENTAL..... \$ 23.02 6.35

 PLUM0412-001 04/01/2013



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PLUMBER (Including HVAC Pipe Installation).....	\$ 31.14	12.43

* SFTX0669-002 04/01/2017		
SPRINKLER FITTER (Fire Sprinklers).....	\$ 29.03	15.84

SUTX2014-021 07/21/2014		
	Rates	Fringes
BRICKLAYER.....	\$ 16.17	0.00
CARPENTER (Drywall Finishing/Taping Only).....	\$ 12.81	0.00
CARPENTER, Excludes Drywall Finishing/Taping, Drywall Hanging, Form Work and Metal Stud Installation.....	\$ 13.51	3.29
CEMENT MASON/CONCRETE FINISHER...	\$ 13.02	0.00
DRYWALL HANGER AND METAL STUD INSTALLER.....	\$ 12.81	0.00
ELECTRICIAN (Alarm Installation Only).....	\$ 15.38	2.92
ELECTRICIAN (HVAC/Temperature Controls Installation Only).....	\$ 19.09	6.45
ELECTRICIAN (Low Voltage Wiring Only).....	\$ 15.38	2.92
FENCE ERECTOR.....	\$ 9.93	1.83
FLOOR LAYER: Carpet.....	\$ 12.81	0.00
FLOOR LAYER: Vinyl Flooring.....	\$ 12.87	0.00
FORM WORKER.....	\$ 12.57	1.03
GLAZIER.....	\$ 15.86	1.00
INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation).....	\$ 16.91	0.00
IRONWORKER, REINFORCING.....	\$ 15.60	0.00
IRONWORKER, STRUCTURAL.....	\$ 15.37	4.34



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LABORER: Common or General.....	\$ 9.30	0.00
LABORER: Driller.....	\$ 14.12	1.01
LABORER: Mason Tender - Brick...	\$ 12.50	2.30
LABORER: Mason Tender - Cement/Concrete.....	\$ 10.82	0.96
LABORER: Pipelayer.....	\$ 11.00	3.47
LABORER: Roof Tearoff.....	\$ 10.06	0.00
LABORER: Landscape and Irrigation.....	\$ 10.00	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 14.43	0.74
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 13.93	0.00
OPERATOR: Bulldozer.....	\$ 18.29	1.31
OPERATOR: Drill.....	\$ 16.22	0.34
OPERATOR: Forklift.....	\$ 14.83	0.00
OPERATOR: Grader/Blade.....	\$ 19.50	1.05
OPERATOR: Loader.....	\$ 12.87	0.70
OPERATOR: Mechanic.....	\$ 17.00	0.00
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 16.03	0.00
OPERATOR: Roller.....	\$ 12.70	0.00
PAINTER (Brush, Roller, and Spray).....	\$ 12.50	0.00
PIPEFITTER, Excludes HVAC Pipe Installation.....	\$ 18.15	0.98
ROOFER.....	\$ 11.42	0.00
SHEET METAL WORKER (HVAC Duct Installation Only).....	\$ 23.56	3.60
SHEET METAL WORKER, Excludes HVAC Duct Installation.....	\$ 21.13	6.53



TILE FINISHER.....	\$ 11.22	0.00
TILE SETTER.....	\$ 12.02	0.00
TRUCK DRIVER: Dump Truck.....	\$ 12.39	1.18
TRUCK DRIVER: Flatbed Truck.....	\$ 19.65	8.57
TRUCK DRIVER: Semi-Trailer Truck.....	\$ 12.50	0.00
TRUCK DRIVER: Water Truck.....	\$ 12.00	4.11

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

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

Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

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

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

Union Rate Identifiers

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

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

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of



Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

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

Union Average Rate Identifiers

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

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

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

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

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



ATTACHMENT #5

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.



EXHIBIT E (Owner and Contractor Agreement)

Standard Form of Agreement Between Owner and Contractor – Stipulated Sum

This AGREEMENT (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)

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**”).

The Architect: (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, select site utilities upgrades, driveways and parking repairs/replacements, striping, site signage and lighting), asbestos and lead paint abatement/encapsulation, all interior finishes for walls, ceilings, and floors. Also included are new plumbing (sewer, water and gas), mechanical, power 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.

**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.

Project	Tentative Date of commencement	Days from Notice to Proceed

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:

Project	Date of commencement	Date of Substantial Completion



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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.

4.4 Liquidated Damages

If for any reason the Contractor does 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 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 breaches 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, is as follows:

_____ \$ _____
Total \$ _____

5.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

ALTERNATES:

_____ \$ _____ .00
_____ \$ _____ .00



5.3 Unit prices, if any:

Item	Units and Limitation	Price Per Unit (\$___)

Unit prices if any shall be as set forth by the Contractor's Bid Sheets delivered in connection with Solicitation No. RAD: _____.

5.4 Allowances included in the Contract Sum, if any:

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

Item	Price

5.5 PRICING OF CHANGES IN THE WORK. In the event of a Modification of Contract which results in an increase in the stipulated sum under this Agreement, each of Owner and Contractor acknowledge and agree that Contractor shall be permitted to and limited to charging: (A) overhead at _____ percent (___%) of such increase; and (B) profit of _____ percent (___%). Contractor shall not receive any payment for General Requirements sums associated with a Modification of Contract; unless critical path extensions are required. The foregoing limitations are also set forth in the Project Manual.

5.6 OWNER'S CONTINGENCIES. The parties have agreed to establish, _____ contingencies which are not included in the Contract Sum, in the not-to-exceed amount of: (A) _____ and No One Hundredths Dollars (\$____,000.00) for the Owner's Construction Contingency, and (B) _____ and No One Hundredths Dollars (\$____,000.00) for a Community Centers Reserve revisions. The Owner's Construction Contingency and the Community Centers Reserve are collectively the "Owner's Contingencies". The purpose of the Owner's Contingencies 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 Contingencies are 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 Construction Contingencies.

Contractor acknowledges and agrees that any Work which is to be charged against the Owner's Contingencies 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 Contingencies. The Contractor shall not proceed with any Work that the Contractor believes is allocable to the Owner's Contingencies until authorized in writing through the issuance of a Modification of Contract.



Any expenditure from or allocable to the Owner's Contingencies, 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 Contingencies. 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 Contingencies. 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 Contingencies shall be retained by or if advanced returned to the Owner.

ARTICLE 6 PAYMENTS

6.1 PROGRESS PAYMENTS

6.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor (which shall be signed by the Prime Subcontractor's Representative under that Prime Subcontract for the Project of even date herewith), and Certificates for Payment issued by the Architect and approved by 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.

6.1.2 The period covered by each Application for Payment shall be one (1) calendar month ending on the last day of the month, and the Contractor shall not submit more than one Application for Payment during any calendar month.

The Work associated with each Application for Payment shall be subject to inspection and verification of Owner. Upon completion of inspection and satisfaction of verification, Owner shall, within thirty (30) calendar days of verification, issue payment to Contractor under this Contractor. Owner's verification shall not act as final acceptance of the Work or otherwise relieve Contractor of its obligations to perform in accordance with the Contract Documents.

6.1.3 Provided that an acceptable Application for Payment is received by the Owner and Architect not later than the tenth (10th) day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the tenth (10th) day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) calendar days after the Architect approves the Application for Payment. Applications for Payment requiring correction shall be returned for correction to the Contractor no later than seven (7) calendar days after receipt.

6.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect and Owner may require. This schedule, unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. No payment shall be made unless, in the judgment of the Owner, all Work usually done at the stage of construction when the advance is made payable, was performed in a good and workmanlike manner according to the Plans and Specifications, and in accordance



with the Budget; and all materials and fixtures usually furnished and installed through the date of such Application for Payment are furnished and so installed.

6.1.5 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. Additionally, all Applications for Payment must separately state charges for labor and charges for materials, as set forth in the General Conditions of the Contract for Construction, as modified, which accompanies this Contract.

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

6.1.6.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ten percent (10.00%) through one hundred percent (100%) completion of the Project. For purposes of completeness, Owner and Contractor acknowledge and agree that any portion of the Contract Sum allocable to general conditions or overhead shall also be payable based upon percentage of completion and shall be separately set forth in each Application for Payment in proportion to the percentage of completion represented on such Application for Payment. 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 General Conditions of the Contract for Construction, as modified;

6.1.6.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ten percent (10.00 %);

6.1.6.3 Subtract the aggregate of previous payments made by the Owner;

6.1.6.4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the General Conditions of the Contract for Construction, as modified by Owner; and

6.1.6.5 Owner is also authorized to retain and withhold from any payment, funds which are authorized to be withheld pursuant to Texas law, or federal law, if applicable.

6.1.7 The progress payment amount determined in accordance with Section 6.1.6 shall be further modified under the following circumstances:

6.1.7.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect and Owner shall determine for incomplete Work, retainage applicable to such Work and unsettled claims; and

6.1.7.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of the General Conditions of the Contract for Construction, as modified.

6.1.8 Reduction or limitation of retainage, if any, shall be as follows:



6.1.8.1 Request for release of retention for completed work may be submitted at fifty percent (50%) of Substantial Completion of a Project element or phase.

6.1.9 Except with the Owner's prior written approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

6.2 FINAL PAYMENT

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

6.2.1.1 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, as modified by Owner; and to satisfy other requirements, if any, which extend beyond final payment;

6.2.1.2 the Contractor provides the Owner with affidavits that all payrolls, bills for materials, supplies, equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied;

6.2.1.3 a final Certificate for Payment has been issued by the Architect and approved by Owner (and if applicable, and organization or entity providing Owner with a source of funds to complete the Project;

6.2.1.4 a final certificate of occupancy (without any conditions) is issued for the entire Project, and final lien waivers as required in the General Conditions of the Contract for Construction, as modified, are delivered to Owner;

6.2.1.5 the Architect and Contractor have executed and delivered to Owner a certificate stating that the Work is completed in accordance with the Plans and Specifications, and all applicable laws, rules, and regulations are satisfied;

6.2.1.6 the improvements, as constructed or modified, which are a part of the Project do not encroach on any easements, right-of-way lines, setbacks, or violate any zoning requirements;

6.2.1.7 the Owner has inspected and reviewed the Work, and accepted the Work;
and

6.2.1.8 the Architect and Contractor shall provide the owner with three (3) sets of Operation and Maintenance Manuals, Warranty Manuals, and Close out Documentation.

6.2.2 The Owner's final payment to the Contractor shall be made no later than thirty (30) days after the issuance of the Architect's final Certificate for Payment, provided, however, that the Owner shall have the opportunity and ability to review and inspect the Work that is the subject to the final Certificate of Payment. Upon Owner's acceptance of the Work, Owner shall issue final payment within thirty (30) days of its satisfactory inspection. Any inspection by Owner shall not serve as a certification that the Work



conforms to the Contract Documents or otherwise relieve Contractor from any obligation to perform in accordance with the Contract Documents.

ARTICLE 7 DISPUTE RESOLUTION

7.1 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.

7.2 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, 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. 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 shall conduct the arbitration in El Paso, Texas. 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 8 TERMINATION OR SUSPENSION

8.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of the General Conditions of the Contract for Construction, as modified by Owner.

8.2 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 9 MISCELLANEOUS PROVISIONS

9.1 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.

9.2 Payments due and unpaid under the Contract shall bear interest from the date payment is undisputed and due at the rate of Four and Twenty Five-Hundredths Percent (4.25%).

9.3 The Owner's representative:

(Name, address and other information)

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 concerning matters to be decided by and addressed by Owner under this Contract 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 Contract 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.

9.4 The Contractor's representative:

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



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

9.6 Other provisions:

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. 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.

**ARTICLE 10
 ENUMERATION OF CONTRACT DOCUMENTS**

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

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

10.1.2 The General Conditions of the Contract for Construction.

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

10.1.4 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)
_____	_____	_____	_____

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

Refer to the Project Manual

Number	Title	Date
_____	_____	_____

10.1.6 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.

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

10.1.7.1 Project Manual for CSP: RAD _____ - ____ - _____;

10.1.7.2 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;

10.1.7. Bid Form for CSP: RAD _____ - ____ - _____ set forth in the Project Manual;

10.1.7.4 Procurement Documents Bid Sheet for CSP: RAD _____ - ____ - _____ set forth in the Project Manual;

10.1.7.5 Form of Bid Bond for CSP: RAD RAD _____ - ____ - _____ set forth in the Project Manual;

10.1.7.6 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;

10.1.7.7 Prime Subcontract for the Project between Contractor and _____, dated as of the date of this Agreement, together with the documents incorporated therein by reference;

10.1.7.8 Certification as to Corporate Principal for CSP: RAD _____ - ____ - _____ set forth in the Project Manual;

10.1.7.9 U.S. Department of Housing and Urban Development Office of Public and Indian Housing Representations, Certifications, and Other Statements of Bidders;

10.1.7.10 U.S. Department of Housing and Urban Development Office of Public and Indian Housing – Certification of Bidder Regarding Equal Employment Opportunity;

10.1.7.11 Section 3 Specifications Clause for CSP: RAD _____ - ____ - _____ set forth in the Project Manual;

10.1.7.12 Preference for Section 3 Business Concerns in Contracting Opportunities for CSP: RAD _____ - ____ - _____ set forth in the Project Manual;

10.1.7.13 Form of Non-Collusive Affidavit Prime Bidder for CSP: RAD _____ - ____ - _____ set forth in the Project Manual;

10.1.7.14 Texas Statutory Performance Bond for CSP: RAD _____ - ____ - _____ set forth in the Project Manual;



10.1.7.15 Payment Bond for CSP: RAD _____ - ____ - _____ set forth in the Project Manual;

10.1.7.16 U.S. Department of Housing and Urban Development Certification by Proposed Subcontractor Regarding Equal Employment Opportunity;

10.1.7.17 Subcontractor Identification for CSP: RAD _____ - ____ - _____ set forth in the Project Manual;

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

10.1.7.19 Contractor's Qualification Statement for CSP: RAD _____ - ____ - _____ set forth in the Project Manual;

10.1.7.20 Davis Bacon Wage Rates for CSP: RAD _____ - ____ - _____ set forth in the Project Manual;

10.1.7.21 Construction Services for the _____ Communities Renovations;

10.1.7.22 Evaluation Criteria for Price Proposal for CSP: RAD _____ - ____ - _____ set forth in the Project Manual;

10.1.7.23 Prime Subcontract between Contractor, Prime Subcontractor and Owner;

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

10.1.7.25 Texas Statutory Conditional Lien Release; and

10.1.7.26 Texas Statutory Complete Lien Release.



RFP: RAD 18-R-0031
Developer Services for Blue Flame Building

**ARTICLE 11
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

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



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EXHIBIT F (Development Costs & Fees)

Exhibit F

BLUE FLAME												
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
Blue Flame	150	120 N. Stanton Street	High Rise	New Construction	9% LIHTC, Traditional Debt, Other	\$ 27,381,765	\$ 39,618,675	\$ 4,985,998	To Be Determined	To Be Determined	TBD	TBD
Total Units	150											

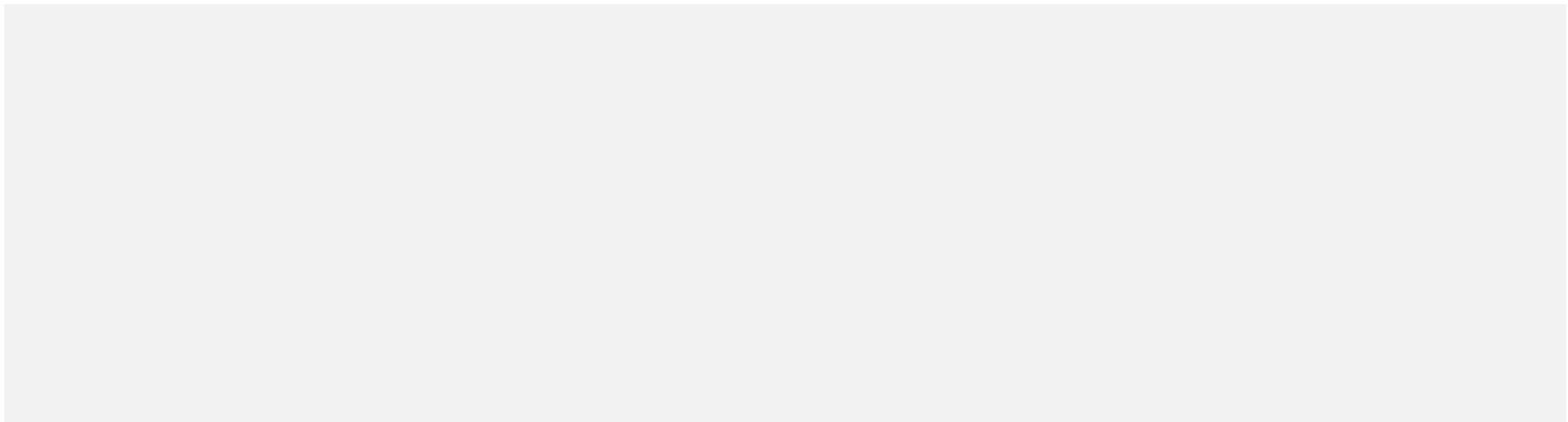




EXHIBIT G (General Conditions)

LIST OF ITEMS THAT SHOULD BE INCLUDED IN THE GENERAL CONDITIONS BY CONTRACTOR

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

- 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



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Postage, UPS, Fed-Ex
Delivery Service
Lumber, for stairs and walkways
Electrical Material
Plumbing

CONSTRUCTION TEMPORARY FACILITIES

Laydown Yard
Fencing Around Laydown Yard
Yard Set up
Sheds & Storage Facilities
Construction Trailers

CONSTRUCTION SERVICES

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

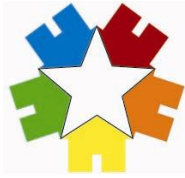


**Housing Authority
of the City of El Paso**

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Developer Services for Blue Flame Building

PART II

CONTRACT CLAUSES



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

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SECTION D

MANDATORY CLAUSES



Housing Authority of the City of El Paso

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Federal Acquisition Regulation (FAR) FAR 2005-83/07-02-2015

Part II – Contract Clauses Section D

Clauses Incorporated by Reference As applicable:

FAR#:	CLAUSE TITLE	DATE
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
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	Clauses Incorporated by Reference: This contract incorporates one or more clauses by reference, with the same forced effect as if they were given in full text.	February 1998



Housing Authority of the City of El Paso

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Developer Services for Blue Flame Building

Instructions to Offerors Non-Construction

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



- 03291 -

1. Preparation of Offers

(a) Offerors are expected to examine the statement of work, the proposed contract terms and conditions, and all instructions. Failure to do so will be at the offeror's risk.

(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the cover sheet and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the HA.

(c) Offers for services other than those specified will not be considered.

2. Submission of Offers

(a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation, and (2) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice.

(c) Facsimile offers, modifications or withdrawals will not be considered unless authorized by the solicitation.

3. Amendments to Solicitations

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

(b) Offerors shall acknowledge receipt of any amendments to this solicitation by

- (1) signing and returning the amendment;
- (2) identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer,
- (3) letter or telegram, or
- (4) facsimile, if facsimile offers are authorized in the solicitation. The HA/HUD must receive the acknowledgment by the time specified for receipt of offers.

4. Explanation to Prospective Offerors

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

5. Responsibility of Prospective Contractor

(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 ability to obtain them;

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

(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 subparagraphs (a)(1), (2), and (3) of this provision.

(c) A modification resulting from the HA's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the HA after receipt at the HA.

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

(e) The only acceptable evidence to establish the time of receipt at the HA is the time/date stamp of HA on the offer wrapper or other documentary evidence of receipt maintained by the HA.



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(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 this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the HA will be considered at any time it is received and may be accepted.

(h) If this solicitation is a request for proposals, proposals may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before award. Proposals may be withdrawn in person by 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

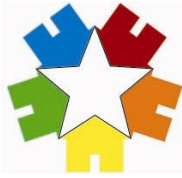
Any protest against the award of a contract pursuant to this solicitation shall be served on the HA by obtaining written and dated acknowledgment of receipt from the HA at the address shown on the cover of this solicitation. The determination of the HA with regard to such protest or to proceed to award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

9. Offer Submission

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

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

[Describe bid or proposal preparation instructions here.]



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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. 3/31/2010)

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.**

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

The following definitions are applicable to this contract:

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

2. Changes

- (a) The HA may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.
- (b) If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the HA shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if the HA decides that the facts justify it, the HA may receive and act upon a

- proposal submitted before final payment of the contract.
- (d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

3. Termination for Convenience and Default

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

4. Examination and Retention of Contractor's Records

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



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- (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



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product of work shall be deemed accepted as submitted if the HA does not issue written comments and/or required corrections within 30 days from the date of receipt of such product from the Contractor.

- (b) The Contractor shall make any required corrections promptly at no additional charge and return a revised copy of the product to the HA within 7 days of notification or a later date if extended by the HA.
- (c) Failure by the Contractor to proceed with reasonable promptness to make necessary corrections shall be a default. If the Contractor's submission of corrected work remains unacceptable, the HA may terminate this contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

13. Interest of Members of Congress

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

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

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

15. Limitation on Payments to Influence Certain Federal Transactions

- (a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Recipient" includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

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

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

- (b) Prohibition.

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

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



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- (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.



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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 Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the

Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

17. Dissemination or Disclosure of Information

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

18. Contractor's Status

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

19. Other Contractors

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

20. Liens

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

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

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of



apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

22. Procurement of Recovered Materials

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.



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’, 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

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

IMPORTANT NOTICE: Preference must be maintained for the entire contract or the contract will be in non-compliance and at risk of termination.

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: _____



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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.

ed by the

1. I was a Section 3 Resident-Owned Business (ROB). List the Contracts and HUD Funded Entity and Contact:

2. I complied with Section 3 by employing at least 30% of my workforce. List the Contracts and HUD Funded Entity and Contact:

3. 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:

4. I complied with Section 3 on a previous HUD funded contract by doing these things and with these entities: Describe:

Initial here to select this option _____

5. I completed HUD Section 3 covered contracts in the past three years but was not required to meet compliance.

Check the box of the corresponding reason below.

I did not trigger the regulation by hiring any new employees on my Previous contract(s) in violation of the Section 3 regulation.

I did not trigger the regulation by hiring any contractors on previous, contract(s) in violation of the Section 3 regulation.

the contract(s)

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 **Street** address not a P O Box # Apt Number



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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 _____

Check the Skills, Trades, and/or Professions you have been employed in or contracted to do for others:

<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



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FY 2016 Income Limits Summary

FY 2016 Income Limit Area	Median Income Explanation	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 (\$) Explanation	18,350	21,000	23,600	26,200	28,300	30,400	32,500	34,600
		Extremely Low Income Limits (\$)* Explanation	11,880	16,020	20,160	24,300	28,300*	30,400*	32,500*	34,600*
		Low (80%) Income Limits (\$) Explanation	29,350	33,550	37,750	41,900	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.



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PART III

**DOCUMENTS, EXHIBITS AND OTHER
ATTACHMENTS**



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SECTION E

LIST OF ATTACHMENT



**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



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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)

a. Name of President:

2. Permanent main office address. Including city, state and zip code, main phone number.

3. When organized (year).

4. If a Corporation, where incorporated.

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.)

7. General character of work performed by your company.

8. Have you ever failed to complete any work awarded to you? If so, where why? (Be specific and attach separate sheets if needed)

9. Have you ever defaulted on a contract? If so, where and why? (Be specific, attach separate sheet if needed.)

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.

12. Experience in this type of work similar in size to this project.

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.)

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



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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 _____)

ss

City/County of _____)

_____ 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 _____.



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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.



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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



**CERTIFICATION OF RESPONDENT REGARDING DEBARMENT,
SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

I, _____, hereby certify on behalf of _____

(insert name of Respondent) and its key principals that we:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by a Federal, State or Local department or agency; and
2. Have not, within a three (3) year period preceding this bid, 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; and
3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or Local) with commission of any of the offenses enumerated in Paragraph (2) of this certification; and
4. Have not within a three (3) year period preceding this bid, had one or more public transactions (Federal, State or Local) terminated for cause of default.

Signature of Key Principal of Respondent



Housing Authority of the City of El Paso

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DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

Approved by OMB

0348-0046

(See reverse for public burden disclosure.)

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance		2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award		3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____	
4. Name and Address of Reporting Entity: Prime _____ Subawardee _____ Tier _____, <i>if known</i> : _____ Congressional District, <i>if known</i> : _____			5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: Congressional District, <i>if known</i> : _____		
6. Federal Department/Agency: _____			7. Federal Program Name/Description: CFDA Number, <i>if applicable</i> : _____		
8. Federal Action Number, if known: _____			9. Award Amount, if known: \$ _____		
10. a. Name and Address of Lobbying Registrant <i>(if individual, last name, first name, MI):</i> _____			b. Individuals Performing Services <i>(including address if different from No. 10a) (last name, first name, MI):</i> _____		
11. 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: _____		
Federal Use Only:				Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)	



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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.



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PART IV

REPRESENTATIONS AND INSTRUCTIONS



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SECTION F

REQUIRED CERTIFICATIONS



Housing Authority of the City of El Paso

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Developer Services for Blue Flame Building

Certifications and Representations of Offerors Non-Construction Contract

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

OMB Approval No: 2577-0180 (rev. 7/30/96)

The burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This form includes clauses required by OMB's common rule on bidding/offering procedures, implemented by HUD in 24 CFR 85.36, and those requirements set forth in Executive Order 11625 for small, minority, women-owned businesses, and certifications for independent price determination, and conflict of interest. The form is required for nonconstruction contracts awarded by Housing Agencies (HAs). The form is used by bidders/offerors to certify to the HA's Contracting Officer for contract compliance. If the form were not used, HAs would be unable to enforce their contracts. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

I. Contingent Fee Representation and Agreement

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

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

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

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

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

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

- (a) is, is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.
- (b) is, is not a women-owned small business concern. "Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.
- (c) is, is not a minority enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals.

For the purpose of this definition, minority group members are:
(Check the block applicable to you)

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

3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

- (1) The prices in this bid/offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder/offeror or competitor relating to (i) those prices, (ii) the intention to submit a bid/offer, or (iii) the methods or factors used to calculate the prices offered;
- (2) The prices in this bid/offer have not been and will not be knowingly disclosed by the bidder/offeror, directly or indirectly, to any other bidder/offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
- (3) No attempt has been made or will be made by the bidder/offeror to induce any other concern to submit or not to submit a bid/offer for the purpose of restricting competition.

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

- (1) Is the person in the bidder/offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
- (2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above (insert full name of person(s) in the bidder/offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offeror's organization);
(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and



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

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

4. Organizational Conflicts of Interest Certification

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

- (i) Award of the contract may result in an unfair competitive advantage;
- (ii) The Contractor's objectivity in performing the contract work may be impaired; or
- (iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.

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

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

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

5. Authorized Negotiators (RFPs only)

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

6. Conflict of Interest

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

7. Offeror's Signature

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

Signature & Date:

Typed or Printed Name:

Title:



RESPONDENT APPLICATION PRIORITY CERTIFICATION

I, _____, hereby certify on behalf of

_____ (insert name of Respondent) and its key principals that:

(i) no application for development funding submitted by this Respondent, other than by score or rank, will have priority over any application for funding for the proposed project for which is described in this RFP or for which the Respondent and the Housing Authority of the City of El Paso (HACEP) have entered into partnership to develop and,

(ii) that the Respondent will make every effort to give this project priority over any other projects it will be submitting funding applications for, and

(iii) the Respondent will make every effort not to submit competing applications within the same geographic, demographic or special set-aside categories within a funding cycle, without notification to HACEP and written approval by HACEP, and

(iv) the Respondent will provide notice to HACEP of any and all contemplated competing funding applications within any same funding cycle in which -HACEP intends to submit an application.

Signature of Key Principal of Respondent



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Respondent Profile Form
Page two

Federal Employer Identification Number _____

Year Firm was established _____

AUTHORIZATION

I hereby verify that the questions listed in the Respondent Profile Form and all statements therein contained are true and correct

Dated this _____ day of _____, 2017.

By _____

Name _____

Title _____



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SECTION G

INSTRUCTIONS TO OFFERORS



Housing Authority of the City of El Paso

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Instructions to Offerors Non-Construction

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



- 03291

1. Preparation of Offers

(a) Offerors are expected to examine the statement of work, the proposed contract terms and conditions, and all instructions. Failure to do so will be at the offeror's risk.

(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the cover sheet and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the HA.

(c) Offers for services other than those specified will not be considered.

2. Submission of Offers

(a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation, and (2) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice.

(c) Facsimile offers, modifications or withdrawals will not be considered unless authorized by the solicitation.

3. Amendments to Solicitations

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

(b) Offerors shall acknowledge receipt of any amendments to this solicitation by

- (1) signing and returning the amendment;
- (2) identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer,
- (3) letter or telegram, or
- (4) facsimile, if facsimile offers are authorized in the solicitation. The HA/HUD must receive the acknowledgment by the time specified for receipt of offers.

4. Explanation to Prospective Offerors

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

5. Responsibility of Prospective Contractor

(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 ability to obtain them;

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

(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 subparagraphs (a)(1), (2), and (3) of this provision.

(c) A modification resulting from the HA's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the HA after receipt at the HA.

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

(e) The only acceptable evidence to establish the time of receipt at the HA is the time/date stamp of HA on the offer wrapper or other documentary evidence of receipt maintained by the HA.



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(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 this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the HA will be considered at any time it is received and may be accepted.

(h) If this solicitation is a request for proposals, proposals may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before award. Proposals may be withdrawn in person by a offeror or its authorized representative if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award. If this solicitation is an invitation for bids, bids may be withdrawn at any time prior to bid opening.

7. Contract Award

(a) The HA will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the HA, cost or price and other factors, specified elsewhere in this solicitation, considered.

(b) The HA may

- (1) reject any or all offers if such action is in the HA's interest,
- (2) accept other than the lowest offer,
- (3) waive informalities and minor irregularities in offers received, and (4) award more than one contract for all or part of the requirements stated.

(c) If this solicitation is a request for proposals, the HA may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

(d) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. If this solicitation is a request for proposals, before the offer's specified expiration time, the HA may accept an offer, whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the HA.

(e) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract.

8. Service of Protest

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

9. Offer Submission

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

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

[Describe bid or proposal preparation instructions here.]



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.

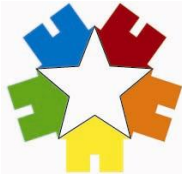
G-13 Offeror must submit proof of all insurance coverages and be prepared to provide additional proof of same should the Housing Authority of the City of El Paso, Texas so request.

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



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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.



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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.



CONFLICTS CERTIFICATION

I, _____, hereby certify on behalf of

_____ (insert name of Respondent) and its key principals that:

- (i) No actual or apparent conflict of interest exists with regard to the Housing Authority of the City of El Paso,
- (ii) No actual or apparent conflict exists with regard to Respondent's or its key principal's possible performance as developer under this Request for Qualifications, and
- (iii) No actual or potential claim exists against the Housing Authority of El Paso.

Signature of Key Principal of Respondent



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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")

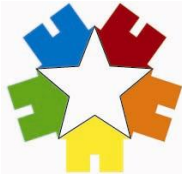
**Potentially
Acceptable**

("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")



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Housing Authority of the City of El Paso

RFP: RAD 18-R-0030
DEVELOPER SERVICES FOR 2018 PROJECTS

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 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:	



REFERENCES

Provide the name, mailing address, and telephone number of two community partner references, two housing authority references, two tax credit investor references, and one housing finance agency reference. References must verify Respondent’s representations.

Community Partner	
Email Address	
Phone	
Contact Name	
Community Partner	
Email Address	
Phone	
Contact Name	
Housing Authority	
Email Address	
Phone	
Contact Name	
Housing Authority	
Email Address	
Phone	
Contact Name	
Tax Credit Investor	
Email Address	
Phone	
Contact Name	
Tax Credit Investor	
Email Address	
Phone	



Housing Authority of the City of El Paso

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Contact Name	
Housing Finance Agency	
Email Address	
Phone	
Contact Name	



**ACKNOWLEDGMENT OF RECEIPT
OF
AMENDMENT OF SOLICITATION or
ADDENDA TO SOLICITATION
FOR DEVELOPMENT IN EL PASO, TEXAS**

1. **AMENDMENT NUMBER(S) and dates issued:** _____

2. **ADDENDA NUMBER(S) and dates issued:** _____

3. **ISSUED BY:** The Housing Authority of the City of El Paso (the “Authority”)

4. **BRIEF DESCRIPTION OF AMENDMENT(S):**
(attach copy(s) of Amendment(s) as issued by HACEP)

4. **BRIEF DESCRIPTION OF ADENDA(S):**
(attach copy(s) of Amendment(s) as issued by HACEP)

5. THE ABOVE SOLICITATION IS AMENDED OR CLARIFIED AS SET FORTH IN THE ATTACHED AMENDMENT(S) OR ADDENDA(S) AS ISSUED BY HACEP. RESPONDENTS MUST ACKNOWLEDGE RECEIPT OF THIS/THESE AMENDMENT(S) OR ADDENDA(S) PRIOR TO THE HOUR AND DATE SPECIFIED FOR RECEIPT OF PROPOSALS, BY SIGNING THIS FORM BELOW.

EXCEPT AS PROVIDED HEREIN, ALL TERMS AND CONDITIONS OF THE SOLICITATION REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.

ACKNOWLEDGMENT OF RECEIPT:

Name

Title

Signature

Date



THIRD PARTY DEVELOPER RFP CHECKLIST

NOTE: The completed and signed off checklist is a mandatory submission requirement.

MANDATORY SUBMISSION/INCLUSION REQUIREMENTS	COMMENTS
1 Original & 4 Copies Submitted 1 Set of Financials	RFP shall be submitted in sealed packages and marked "Third Party Developer RFP"
Deadline Met	Deadline Time: 3:00 PM Date: August 25, 2017
Letter of Interest Submitted	As outlined in Section C.2.a. of the RFP
Organizational Structure & Staffing	As outlined in Section C. 2.b.1 of the RFP
Profile of Principals & Key Staff	As outlined in Section C. 2.b.2 of the RFP
Contract Termination Explanation	As outlined in Section C.2b.3. of the RFP
Litigation Explanation	As outlined in Section C.2b.4. of the RFP
Eligibility to Bid & Contract	As outlined in Section C.2.b.5. of the RFP
Previous Housing Development Experience	As outlined in Section C.2.b.6. of the RFP
Financing Experience	As outlined in Section C.2.b.7. of the RFP
Green Building Experience	As outlined in Section C. 2.b.8. of the RFP
Capacity	As outlined in Section C.2.b.9. of the RFP
Financial Statement	As outlined in Section C.2.b.10. of the RFP
Insurance	As outlined in Section C.2.b.11. of the RFP
References	As outlined in Section C.2.b.12. of the RFP
Certifications	As outlined in Section C.2.b.13. of the RFP
Proposed Development Methods & Strategy	As outlined in Section C.2.c. of the RFP
Utilization of DBE/MBE & WBE Business Enterprises	As outlined in Section C.2.d. of the RFP
Understanding Local Requirements	As outlined in Section C.2.e. of the RFP
Fee Structure	As outlined in Section C.2.f. of the RFP
SUBMISSION OUTLINE	To receive the maximum points; proposals shall be submitted in accordance with the outline in Section 3.a. of the RFP.
Evidence of the Respondent's Ability to Perform the Work	Maximum points - 10
Qualification of Key Personnel, Location & Capacity	Maximum points - 10
Ability to Meet Deadlines	Maximum points - 5
Financial Stability	Maximum points - 10
Cost to HACEP/Fee Structure	Maximum points - 40
References	Maximum points - 10
Demonstrated Knowledge of Governmental Regulations	Maximum points - 10
Ability of Respondent to Meet Section 3 Requirements	Maximum points - 5



Page two
Developer RFP Checklist

MANDATORY REQUIREMENT	Submissions MUST include ALL of the required documentation as requested per the RFP. Failure to do so may result in disqualification from the solicitation without further review.
ATTACHMENTS	
Attachment #5 - Certification of Respondent Regarding Section 3 Requirements	
Exhibit B	For each project described in Section C.2.b.6 per the RFP.
Certification of Respondent Regarding Debarment, Suspension & Other Responsible Matters	
Non-Collusive Affidavit	
Certification Regarding Lobbying	
Conflicts Certification	
Respondent Application Priority Certification	
Respondent Profile Form	
References	Two (2) community partner references, two (2) housing authority references, two (2) tax credit investor references, and one (1) housing finance agency reference.
Acknowledgement of Receipt of Amendment / Addenda of Solicitation	Applicable if HACEP issues an Amendment or Addenda prior to the RFP deadline date.
HUD Form 5369-C Certifications and Representations of Respondents	Form may be downloaded at: http://www.hud.gov/offices/adm/hudclips/forms/hud5a.cfm
Developer RFP Checklist	Signed and dated by Key Principal of Respondent
Insurance Documentation	As outlined in Section C.2.b.11. of the RFP



Housing Authority of the City of El Paso

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ATTACHMENT H

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

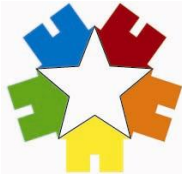


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5. Development Expenditures	5
6. Staff Management of Development Contracts	6
7. Provisions for Development Projects with Third-Part Developers	6
8. Reporting and Enforcement	8
Attachment A: Matrix (Parts A and B)	Attached



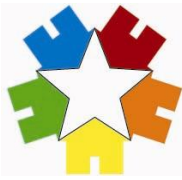
Section 1: Purpose

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 Subcontractor¹ 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

¹ 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

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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 18-R-0031

Developer Services for Blue Flame Building

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 <i>with</i> 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 <i>without</i> 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
Non-performance Letters					
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				