



**SOLICITATION TYPE:** Request for Proposals (RFP)

**DESCRIPTION:** Professional Property Management Services

**RFP NUMBER:** RFP #19-R001

**ISSUE DATE:** January 4, 2019

**PRE-PROPOSAL CONFERENCE Call:** January 9, 2019 at 4:00 pm ET  
Call in Number: 1-800-977-8002  
Participant Code: 9950119#

**TOUR OF THE FACILITIES:** January 16, 2019 at 1:00 pm ET  
Collingwood Green 1 & 11 & Parkwood  
800 Division St, Toledo, OH 43604

**PROPOSAL DUE DATE & TIME:** January 29, 2019 at 3:00PM ET

**PROPOSAL DELIVERY LOCATION:** Attn: Sherry Tobin  
Manager of Procurement & Contracts  
435 Nebraska Ave, Toledo, OH 43604

**DIRECT INQUIRIES TO:** Kattie Bond, Sr. VP of Operations  
[kbond@lucasmha.org](mailto:kbond@lucasmha.org)  
(419) 259-9400

**SECTION 3 INQUIRIES:** Martice Bishop  
Section 3 Coordinator  
[mbishop@lucasmha.org](mailto:mbishop@lucasmha.org)  
(419) 259-9441

**Note: All inquiries must be received via email, no later than 12:00 P.M. Eastern Time, January 18, 2019. All Proposals are subject to the Conditions, Instructions, Requirements and the specifications attached hereto. These documents are available at web address: [www.lucasmha.org](http://www.lucasmha.org).**

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All proposers shall be required to meet the Affirmative Action requirements and Equal Employment Opportunity requirements as described in Executive Order #11246. Each proposer must ensure that all employees and applicants for employment are not discriminated against because of their race, color, religion, sex, military status, national origin, disability, pregnancy, genetic information, age, ancestry, religious creed, handicap, or sexual orientation."

The responsibility for submitting a response to this RFP at the Lucas Metropolitan Housing Authority on or before the stated time and date will be solely and strictly the responsibility of the respondent.

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**RFP**  
**REQUEST FOR PROPOSALS**  
**#19-R001**

**Professional Property Management Services**



Prepared by: Lucas Metropolitan Housing Authority  
435 Nebraska Avenue, Toledo, OH 43604  
P.O. Box 477, Toledo, OH 43697-0477

**Demetria Simpson**  
President and Chief Executive Officer

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## **REQUIREMENTS & SPECIFICATIONS**

### **Introduction/Background:**

The Lucas Metropolitan Housing Authority (LMHA), referred to as the "Owner" is requesting proposals from qualified property management companies, referred to as the "Offeror" to provide property management services for Collingwood Green Development, a 272-unit, a senior and family housing development and Parqwood Apartments, a 134-unit housing development.

It is the Owner's intention to solicit proposals, evaluate the proposals, conduct oral presentations with the Offerors in the competitive range, verify the information presented, and award a contract to the responsible from whose proposal is most advantageous to the Owner, with price and other factors considered. The Owner may award a contract to a qualified, licensed and insured professional property management company to manage, maintain and operate the Collingwood Green and Parqwood developments. It is further desired that the solicitation process will ensure competitive bidding.

1. Collingwood Green is the redevelopment of a former 400-unit LIPH project near the Central Business District of Toledo. This master planned community has a PUD in place and a commitment for new public infrastructure provided by the City of Toledo.
  - Phase I is a 65-unit elderly project that has closed and is 83.08% occupied.
  - Phase II is a 68-unit townhouse family development that has closed and is 92.65% occupied.
  - Phase III is a 55- unit townhouse family development that is a continuation of Phase II. Construction commenced in November 2018, with anticipated completion in December 2019.
  - Phase IV a pending phase, may include a 30-unit townhouse project that will build upon the themes of Phase II and III, 10 units of Senior Villas and a 30-unit mixed use project on the corner of Nebraska Avenue and Division Street. This project will have ground floor commercial and could use New Market Tax Credits (NMTC) in addition to LIHTC.
  - A full- service community center may be incorporated into Phase IV.
2. Parqwood Apartments (RAD) is a 134-unit 4% LIHTC project with PBRA and FHA mortgage as permanent financing. Closing and renovations have been completed.
  - Parqwood Apartments has undergone substantial rehabilitation in 2015 as part of a HUD program to convert the building from Public Housing into Section 8 rental subsidized units. The building is a low-income, age restricted (age 55+) apartment community that consists of 134 units situated in a three-story elevator building (with basement) and an adjoining one-story community building. As part of the program all of the units in the building have received

new windows, finishes, bathroom fixtures and kitchens. Current occupancy is at 88.06%.

### **Scope of Work**

The Owner will enter into a one-year contract for property management services with an option to renew the contraction for an additional year. The renewal period is subject to the Owner's approval and not to exceed a total contract duration of three years. Such contracts and extensions will be subject to various termination rights for cause, convenience, or investor determination. The property management services will include, but will not be limited to, the following duties and responsibilities.

All proposals must conform to the requirements and specifications outlined in this solicitation and any attachments. Final selection of a professional property management company is subject to the approval of the Ohio Capital Corporation for Housing, the Ohio Housing Finance Agency, the U.S. Department of Housing and Urban Development and the LMHA Board of Directors.

Property management services will generally be defined as including the following:

1. Staffing of knowledgeable management and maintenance personnel for the property who are responsive to the physical needs of the property and provide a high level of service to the residents;
2. Staffing of knowledgeable management familiar with tax credit compliance (tax credit specialist certification preferred), Public Housing compliance (PHM certification preferred), Rental Assistance Demonstration (RAD) compliance and knowledge of HOME program compliance.
3. Marketing the property to eligible potential tenants so that a reasonably high occupancy percentage is achieved and maintained;
4. Continued lease-up of all housing units, including determining eligibility, timely certifying and re-certifying income and making tenant selections – including timely upload of 50058 forms to the U.S. Department of Housing and Urban Development (HUD's) PIH Information Center (PIC) database.
5. Screening tenants according to a Tenant Selection Policy adopted by the LMHA Board;
6. Qualifying tenants based on HUD and tax credit restrictions so that no units are found to be not in compliance;
7. Rent determinations and re-certifications for public housing tenants;
8. Bill and collect rents and other receipts;
9. Enforce resident leases and take appropriate legal action;
10. Keeping property and tenant files in suitable condition for review by investors, HUD, and tax credit compliance agencies;
11. Conduct regular visits to each unit. Two visits the first year and annually thereafter;
12. Perform and/or oversee the emergency, daily/regular and preventative maintenance for the buildings, grounds and units to ensure each development is well-maintained;
13. Perform and oversee the daily operations of the project, including the maintenance of a system of records, books and accounts using the accrual method of accounting;

14. Provide accurate and timely monthly reports, year-end financial statements, audit drafts and tax returns by January 30<sup>th</sup>;
15. Preparing and presenting to LMHA and investors annual budgets for the operation of the property and detailed performance reports on a monthly, quarterly and annual basis. Each development must have separate accounting and reporting;
16. Meets with the owner's representative, and in conjunction with the owners, develop an accurate budget 90- days prior to year-end;
17. Providing software and technical systems to fulfill the duties of a property manager;
18. Pay the debt services, utilities and taxes on the developments in a timely manner;
19. Daily management, maintenance and operation of the above listed properties;
20. Providing ongoing training and support to on-site personnel;
21. Hire and train staff, whenever possible, from the neighborhoods served;
22. Maintaining compliance with all Ohio Housing Finance Agency Qualified Allocation Plan property management-related Policy Statements;
23. Additional program compliance that needs to be performed is as follows: any requirements for LIHTC low-income housing tax credit, (a dollar-for-dollar tax credit for affordable housing investments); Multi-family – is a classification of multiple separate housing units with different forms of subsidy (Sec 8, PH, etc.); Public Housing – Housing provided by a PHA subsidized by public funds (HUD); Layered Funding – A project with multiple forms of subsidy (i.e. HOME funds, HCVP, LIPH, Market rate, etc.)
24. Comply with the requirements as noted in Property Management Sample Agreement Appendix A of this RFP;
25. Obtaining and evaluating proposals and bids to provide maintenance and other services and procuring subcontractors as needed to comply with all requirements as noted in Property Management Sample Agreement Appendix A.

Site staff and other operating expenses (except security and resident engagement services) shall be paid by the rental revenue of the property and shall not be a direct expense of the company providing property management. The list above is not intended to be comprehensive but a general guide for the scope of the duties sought from the property management company.

### **Reporting**

The Property Manager will be responsible for generating an Occupancy Summary report for each development by the first working day after the end of each calendar month for the preceding month.

The Property Manager will also be responsible for generating a Monthly Operating Report for each development on or by the 15<sup>th</sup> day after the end of each calendar month, including, but not limited to:

1. An Operating Report Reflecting Budget Comparisons w/ Actual Operating Expenses and Receipts
2. Summary of Account Balances for all Operating, Deposit, Escrow and Reserve Accounts

3. Income Statement
4. Balance Sheet
5. Rent Roll
6. Bank Reconciliation
7. Receivable Ledger / Trial Balance / Aging Report
8. Itemized Statement of Receipts and Disbursements
9. Itemized Statement of All Accounts Receivable
10. Payable Ledger / Trial Balance / Aging Report
11. Security Deposit Activity
12. Additional Information as may be required.

LMHA is asking that each offeror submit samples of the above-mentioned reports in their response under **Tab D**.

The Property Manager will be responsible for generating a quarterly report for each development on or by the 15<sup>th</sup> day after the end of each calendar quarter, including, but not limited to:

1. Balance Sheet
2. Income Statement with Actual vs Budget Comparison
3. Copies of Cancelled Checks and Any Statement/Invoice for Real Estate Taxes and Insurance Premiums Paid during the quarter
4. Copies of Cancelled Check (s) and Invoice for any payment of \$5,000 or more
5. Reconciled bank statements for all accounts
6. Additional information as may be required.

After the preliminary selection of a company from this Request for Proposal, LMHA will enter into negotiations with that company to complete a Management Services Agreement (the "Management Agreement"), further stipulating the specific duties of the property manager. That document is required by HUD to contain certain definitions and clauses that are important for any company proposing to manage the property to fully understand prior to submitting a proposal. The HUD required terms and conditions in the Management Agreement are attached to this Request as **Appendix A**.

The Authority does not intend for the property management company to be a party to the financing of the property or to provide guarantees for the financial performance of the property. As part of the negotiation of the Management Agreement, the company and LMHA will specifically designate the area of grounds that are to be maintained by the company. The maintenance of all designated areas will be an expense of the property and not a direct expense of the management company.

**Respondent should propose a fee structure consistent with the HUD Safe Harbor practices for mixed-finance properties. This document is attached (Appendix B) and may be found on the HUD Mixed-Finance website at**

[https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph/hope6/grants/admin](https://www.hud.gov/program_offices/public_indian_housing/programs/ph/hope6/grants/admin)

Generally, fees may be proposed on a percentage of effective gross income (“EGI”) or on a per-unit-month (“PUM”) basis. If the respondent chooses to propose a fee based on EGI, it may assume the public housing units have rent that is the equivalent of the tax credit units.

Prior to the commencement of leasing, the selected company will be required to participate in planning sessions, author marketing and management reports, and provide details about their operational history in support of applications for financing. No compensation will be provided for these tasks.

### **Requirements of the Property Management Company/Property Manager**

The Property Manager will be a Specialist in Housing Credit Management (SHCM) or Housing Credit Certified Professional (HCCP) or Blended Occupancy Management Certification, LIHTC Management Certification and a certified Public Housing Manager (PHM) or able to obtain these certifications within 6 months of contract commencement. Housing Multifamily Specialist (MHS) certification is preferred.

The Property Management Company will perform its services in full compliance with applicable Federal, State and local government regulations and also with the terms and conditions of the attached Property Management Sample Agreement (Appendix A). All units will be subject to Public Housing and LIHTC rules and regulations, as well as the policies and procedures in Collinwood Green I, Collingwood Green II, LMHA’s and Parqwood management plans.

The Property Management Company should provide information on the software program(s) for which they are licensed and have in use at other currently managed developments. The Property Management Company should provide any experience that they have using Yardi Voyager or Emphasys Elite.

All proposals must conform to the requirements and specifications outlined in this solicitation and any attachments. Final selection of a professional property management company is subject to the approval of the Ohio Housing Finance Agency, the LMHA Board, the Limited Partner, and the U.S. Department of Housing and Urban Development.

### **Evaluation Criteria**

LMHA will enter into negotiations for a Management Agreement with the company with the most responsive proposal that best meets the needs of the Authority. Proposals will be reviewed by the Authority’s Manager of Development for submission requirements. Proposals will then be scored by an evaluation team selected by the Authority and using the weights and criteria described below and on the Scoring Evaluation Plan found later in this RFP. Proposals not meeting the submission requirements set forth in this RFP may be determined as non-responsive.

### **All offerors must be OHFA pre-qualified Property Managers.**

Responsive proposals will be evaluated based on the following:

- **Experience** - The chief criteria will be evidence of the proposing company’s actual experience in marketing and managing affordable and mixed-income housing. The ideal company would have substantial experience in the local market managing tax credit and HUD-supported properties with 50 units or more. Resumes of key personnel should be included with the submission. The company should have the demonstrated ability to provide excellent physical care of properties, attract and retain high quality tenants, provide service and amenities that distinguish their



properties and have no compliance issues. The Property Management company should have experience in established financial management systems and tenant database capability and experience in administering the delivery of resident social supportive services.

- **Capacity** - A qualified company will demonstrate evidence of their ability to dedicate regional staff to the property and to attract and retain site-specific staff. The company must also demonstrate its capacity to perform over a period of 15 years or more and the financial stability needed for long-term success;
- **Supporting Materials** - The Company may provide materials that it deems useful in further helping to determine its qualifications, including a profile of projects of similar type that have been successfully marketed to the target audience. Additionally, Offeror shall submit a proposed Estimate of Certain Annual Operating Expenses (Attachment A).
- **Section 3** - This contract is subject to the requirements of Section 3 of the HUD Act of 1968, as amended, 12 U.S.C.1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the area of the Section 3 covered project, and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part, by persons residing in the area of the Section 3 covered project.
- **Workforce Diversity**; Demonstrated commitment of respondent to workforce diversity (MBE/WBE/EEO). LMHA supports opportunities that will create sustainable employment options for a diverse talent pool typically underrepresented (ensuring equality of opportunity fully in accordance with equal employment laws of the U.S. Department of Housing and Urban Development). Additionally, the LMHA is committed to a goal of thirty-five percent of all contract funds being awarded to Minority Business Enterprises (MBE). The firms submitting proposals are encouraged to include MBE participation to the maximum extent possible.
- **Fee** - The reasonableness of the proposed fee to the Authority for providing the required services.

To promote fair and equal treatment of all proposals, each evaluation factor carries a relative weight. The weight of each evaluation criteria listed above is defined in the Evaluation Plan attached. Interviews and site visits will be required of respondents deemed to have a competitive proposal.

## **GENERAL INFORMATION**

### **Introduction**

Lucas Metropolitan Housing Authority is a metropolitan housing authority organized and existing under the Ohio Revised Code Section 3735.27, et seq., and is governed by the U.S. Housing Act of 1937, as amended, and subject to regulation under Title 24 of the Code of Federal Regulation.

LMHA is governed by a five (5) person Board of Commissioners, appointed pursuant to the above - cited statute. The President and Chief Executive Officer controls the daily operations.

The mission of LMHA is "Housing is vital to our past, present and future! We create quality housing opportunities and build communities through collaborative partnerships. While stimulating economic growth, we empower individuals and develop the neighborhoods of tomorrow for the people of today".

LMHA is committed to a goal of thirty-five percent of all contract funds being awarded to Minority Business Enterprises (MBE). The firms submitting proposals are encouraged to include MBE participation to the maximum extent possible.

The Competitive Negotiation Process or Award without Discussion(s) will be used to select the contract award, beginning with the highest ranked firm. LMHA reserves the right to negotiate a contract with the individual(s), firm(s), or organization(s) who provides the greatest benefit to LMHA, not necessarily the lowest price. The Competitive Negotiation Process considers many factors; lowest price may not indicate the successful vendor.

### **Contact Person:**

**Kattie Bond, Sr. VP of Operations**  
**[kbond@lucasmha.org](mailto:kbond@lucasmha.org)**  
**(419) 259-9400**

### **Vendor Disclosures**

Vendor must provide disclosure of any pending or threatened court actions and/or claims against the Vendor. This information may not cause rejection of the proposal; but withholding the information may be cause to reject the proposal.

### **Conflict of Interest**

No vendor will promise, or give to any LMHA employee anything of value that could influence that employee in their decision on awarding contracts. No vendor will try to influence an employee of LMHA to violate any procurement policies of the agency, the Ohio Revised code, or Federal Procurement Regulations.

## Subcontractors

The successful Offeror(s) shall not contract with any proposed subcontractor who has not been accepted by LMHA. The successful Offeror(s) shall notify LMHA in writing the name of each proposed subcontractor. The acceptance or any objection shall be expressed in writing by LMHA within ten (10) working days after the receipt of said request. LMHA may, without claim for extra cost by the successful Offeror(s), may disapprove any subcontractor for cause on the basis of its own determination or, because the proposed subcontractor is listed as ineligible to receive awards of contracts for the United States on a current list or lists furnished by HUD.

## Hiring and Subcontracting Strategies / Practices

With the submission of this proposal, the Offeror shall be required to provide a Subcontracting Plan, which will be in line with LMHA's desired commitment to 35% of all contracts to be awarded to Minority Business Enterprises (MBE). Also describe the strategy for minority participation in the organization in terms of hiring staff. Provide information on the number and percentage of minority employees in supervisory and non-supervisory staff positions.

## Section 3 Resident Participation

HUD Act of 1968, Section 3, and all revisions, are hereby incorporated into this solicitation by reference. With the interest of complying with these regulations to the greatest extent feasible, the Offeror shall be required to demonstrate compliance with the LMHA Section 3 Policy and Procedures hereby incorporated in this solicitation by reference. All inquiries relative to this program shall be directed to LMHA's Section 3 Compliance Coordinator.

## Safety Precautions

The Property Management Company shall practice acceptable safety precautions so as not to cause harm to any persons or property while performing services under this RFP or any resulting contract. The Management Company shall also follow industry safety standards and use only industry approved safety equipment in accordance with the manufacturer's specification in the performance of all duties.

## Minimum Wage

The Property Management Company shall pay all of its employees at least the legal minimum wage as determined by the United States Department of Labor.

## Green Procurement

LMHA is committed to purchasing products and services that meet the local, state, and national environmental goals. Purchasing preference (whenever feasible) will be given to products that:

- Decrease greenhouse gas emissions or are made with renewable energy;
- Decrease the use of toxins detrimental to human health and to the environment;
- Contain the highest possible percentage of post-consumer recycled content (a finished material that would normally be thrown away as solid waste at the end of its life cycle, and does not include

- manufacturing or converting wastes);
- Limit air, land, and/or water pollution;
- Reduce the amount of waste they produce;
- Are reusable or contain reusable parts (rechargeable batteries, refillable pens, etc.); or
- Are multifunctional (i.e., scanner/copier/printers, multipurpose cleaners) and serve to decrease the total number of products purchased.

If feasible, preference will also be given to suppliers who offer environmentally preferable products, who work to exceed their environmental performance expectations, and who can show documentation of their supply-chain impacts.

LMHA hopes to engage producers and suppliers of products and services it uses to utilize business practices that reduce negative environmental impact.

### Insurance Requirements

#### Proof of Insurance for Contractors and Vendors

##### Workers Compensation:

1. LMHA requires that contractors and vendors supply LMHA with a current Workers Compensation Certificate.
2. LMHA requires that the Workers Compensation Certificate be valid for the term of the contract.
3. Contractors and vendors will immediately provide verification of coverage for the contract term.

##### General Liability:

1. Contractor agrees to name **LMHA** as an **additional insured** on its general liability policy, which shall be primary to LMHA's general liability policy.

##### Insurance Commercial Liability:

1. LMHA requires that the contractors and vendors supply LMHA with a current Certificate of Insurance listing LMHA as an additional insured to their commercial general liability policy.
2. Such coverage must be maintained for the term of the contract.
3. LMHA requires that the contractors and vendors' general liability policy such insurance be primary to LMHA's general liability policy.
4. Insurance limits for contractors and vendors' policies shall be no less than \$500,000/\$1,000,000 for personal injury and property damage.

##### Insurance Automobile Liability

1. Contractors and vendors shall provide proof of automobile liability insurance for their automobiles, trucks or other vehicles used in performance of their contracts of \$250,000/\$500,000 for personal injury and property damage.

##### Indemnity:

1. Contractors and vendors agree to indemnify LMHA, to the fullest extent provided by law, for any and all claims arising out of their performance of the contracts.

Processing:

1. LMHA's Manager of Procurement shall be responsible for obtaining proof of the listed above documents and ensuring that LMHA contracts have the appropriate indemnifications.

### AFFH Compliance

The parties agree to affirmatively further fair housing. For purposes of the AFFH rule, the duty to "affirmatively further fair housing" means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.

### Applicable Statutes, Regulations and Orders

Offeror(s) shall comply with all statutes, rules, regulations, and executive orders affecting procurements by Housing Authorities, including Copeland "Anti-Kickback" Act (18 USC 874), Fair Labor Standards Act (29 USC 201 et Seq.), etc. A full list may be obtained from the Procurement Department.

### Record Retention Policy

Contractor shall retain all books, documents, papers and records pertaining to an awarded contract for three (3) years after final payment and all other pending matters are closed.

### Vendor Examination of the RFP

Vendors are expected to be familiar with the entire RFP. The vendor is expected to respond to the RFP in a manner that makes it clear they understand and have responded to all sections of the RFP.

If a vendor discovers any mistakes or omissions in the RFP they must notify LMHA's Contact Person in writing. Clarifications and corrections will be sent to all vendors who have registered with the agency for the RFP.

### Changes to RFP

LMHA may make changes to this RFP by addendum and shall be posted at [www.lucasmha.org](http://www.lucasmha.org).

### Availability of Funds

This RFP and all agency contracts are contingent on the availability of funds. If, during the RFP process, funds are not available for the proposed services, the RFP process will be cancelled. The vendor will be notified at the earliest possible time. LMHA is not required to compensate the vendor for any expenses incurred as a result of the RFP process.

### Non-Appropriation Clause

The proposed services will be subject to termination in the subsequent fiscal years if the sufficient funds are not appropriated and budgeted or are not otherwise available to continue making payments for the equipment of other services performing similar functions and services.

## Termination

LMHA reserves the right to terminate an agreement without prior notification for reasons it deems in the best interest of LMHA. If terminated, LMHA will notify the contractor of the termination in writing by certified mail, return receipt requested, and shall pay contractor for services rendered prior to contractor's receipt of the Notice of the Agreement Termination.

## LMHA Reservation of Rights

Cancellation of the ensuing contract may be done at any time for unsatisfactory work, untimely service, or any other reason deemed necessary by the LMHA.

- Reject any or all proposals, to waive any informality in the RFP process, or to terminate the RFP process at any time, if deemed by the Agency to be in its best interests.
- Not to award a contract pursuant to this RFP.
- Terminate a contract awarded pursuant to this RFP, at any time for its convenience upon 10 days written notice to the successful bidder(s).
- Determine the days, hours and locations that the successful proposal(s) shall provide the services called for in this RFP and the right to increase or decrease sites and locations as LMHA desires.
- Retain all proposals submitted and not permit withdrawal for a period of 90 days subsequent to the deadline for receiving proposals without the written consent of LMHA.
- Negotiate the fees proposed by the bidder entity
- Cancellation of the ensuing contract may be done at any time for unsatisfactory work, untimely service, or any other reason deemed necessary by the LMHA.
- Reject and not consider any proposal that does not meet the requirements of this RFP, including but not necessarily limited to incomplete proposals and/or proposals offering alternate or non-requested services.
- Have no obligation to compensate any bidder for any costs incurred in responding to this RFP.
- Make an award to multiple proposals (including joint ventures).
- Select a proposal(s) for specific purposes or for any combination of specific purposes.
- LMHA reserves the right to withhold payment of invoices if in their opinion the work is not completed to Agency satisfaction
- To defer the selection and award of any offeror(s) to a time of the LMHA's choosing.
- At any time during the RFP or contract process to prohibit any further participation by a offeror or reject any proposal submitted that does not conform to any of the requirements detailed herein. By accessing the [nahro.economicengine.com](http://nahro.economicengine.com) Internet System (hereinafter, the "noted Internet System" or the "System") and by downloading this document or by reviewing the RFP received via email, each prospective offeror is thereby agreeing to abide by all terms and conditions listed within this document and within the noted Internet System, and further agrees that he/she will inform LMHA in writing within 5 days of the discovery of any item listed herein or of any item that is issued thereafter by LMHA that he/she feels needs to be addressed. Failure to abide by this time frame shall relieve LMHA, but not the prospective offeror, of any responsibility pertaining to such issue.

## Holidays

LMHA recognizes the following holidays as vacation days for its employees:

New Year's Day	Columbus Day
Dr. Martin Luther King, Jr.'s Birthday	Veteran's Day
President's Day	Thanksgiving Day
Memorial Day	Day after Thanksgiving
Independence Day	Christmas Eve
Labor Day	Christmas Day
New Year's Eve	

## **TERMS & CONDITIONS**

The RFP and the commitments made in the selected proposal will be contractual obligations, if a contract ensues. Failure to accept these obligations may result in cancellation of the award.

### Type of Contract

The evaluation of proposals submitted in response to this RFP may result in the issuance of a contract. The contract will incorporate the requirements of the RFP, the vendor's proposal, and all other agreements that may be reached.

The vendor is normally responsible for the execution of the project/program and contract requirements.

If the vendor proposes a different type of approach, describe the contractual protection offered to ensure successful implementation of the project. If vendor proposes a multi-vendor or sub-contract approach, clearly describe the responsibilities of each party and the assurances of the performance you offer. The successful vendor's proposal, this RFP, and other applicable addenda will become part of the final contract and will merge into the contract.

### Contract Period – Funding & Invoicing

Contracts shall be for a one-year period with the option for two additional one-year extensions solely at the discretion of the LMHA. Requests for payment shall be subject to the requirements of HUD 5370. LMHA payment terms are N30. Payment by LMHA is made within 30 days of receipt of invoices and any required documentation.

### Confidentiality & Security

Any vendor that has access to confidential information will be required to keep that information confidential.

**Contractor shall comply with all applicable federal, state and local laws and ordinances as may be amended from time to time.**

## **SUBMITTING PROPOSALS**

### **Preparation of Proposal**

Proposals must provide a clear picture of the offeror's qualifications to provide the services required in the RFP. The offeror should respond to the RFP instructions and requirements. The proposal must include all costs that relate to the responses submitted.

All proposals become the property of LMHA to use. All proposals will be considered public information and will be open for inspection.

### **Proposal Cost**

The cost of creating proposals is the responsibility of the vendor and shall not be chargeable to LMHA. The vendor must guarantee the pricing listed in the proposal will remain in effect for a minimum of 360 days after the proposal submission date.

### **False or Misleading Statements**

Proposals containing false or misleading statements may be rejected.

### **Vendor Representative's Signature**

An officer of the Respondent, who is legally authorized to enter into a contractual relationship on behalf of the Respondent, must sign the submission package, and Respondent(s) must affix the organization's corporate seal to these documents. In the absence of a corporate seal, a Notary Public must notarize the submission package signature. The signature must indicate the title or position the individual holds in the vendor's organization.

### **Delivery of Proposals**

Bound and tabbed proposals with table of contents [one (1) original and four (4) copies, all clearly marked] are to be submitted to LMHA's Contact Person at the address listed in the RFP **(Total of five)**. **The completed submission package must be received by the time and date listed on the cover of this proposal.** The original and all copies of the submission package must be labeled with the Respondent's name, address, telephone number, email address, due date and RFP title: **RFP#19-R001 "Professional Property Management Services"**. Proposals received after the deadline will not be considered. If mailed, the vendor should use certified or registered mail, UPS, or Federal Express with return receipt requested. Faxes or electronically mailed proposals will not be accepted.

LMHA reserves the right to request an electronic copy of the proposal after the deadline has past.

**The completed submission package must be received by the time and date listed on the cover of this RFP.**

All vendors must carefully review their final proposals. Once opened, proposals cannot be



changed; however, LMHA may request information or respond to inquiries for clarification purpose only.

All vendors submitting a proposal must agree to honor the terms and conditions contained herein for the life of the contract.

### Proposal Details

The detailed proposal must include information as follows:

#### 1. Submission Contents

**The proposal shall be divided into sections, as follows;**

Tab A – Letter of Transmittal

Tab B – Organization

Tab C – Statement of Qualifications and Experience

Tab D – Supporting Materials

Tab E – Scope of Services

Tab F – Cost Proposal

Tab G – MBE/WBE Participation

Tab H – References

Tab I – Exhibits

### Acceptance and Rejection of Proposals

LMHA reserves the right to accept or reject any or all proposals, to take exception to the RFP specifications, or to waive any formality. Firms may be excluded from further consideration for failure to comply with the specifications of this RFP. The recommendation of LMHA staff, LMHA President / CEO and LMHA's Board of Housing Commissioners shall be final.

### Withdrawal of Proposal

Proposals may be withdrawn by written request dispatched by the Respondent in time for delivery in the normal course of business prior to the proposal due date and time. Negligence on the part of the Respondent in preparing the required documents confers no right of withdrawal or modification of proposal data after such documents are opened.

### Evaluation and Award of Contract

The Competitive Negotiation Process will be used to select the agreement award, beginning with the highest ranked firm. LMHA reserves the right to negotiate an agreement with individual (s), firm(s), or organization (s) that provides the greatest benefit to LMHA, not necessarily the lowest price. Firms in the competitive range may be required to be interviewed by the evaluation panel.

LMHA will select the respondent that is the most advantageous to LMHA based upon the evaluation criteria stated herein. LMHA reserves the right to negotiate price and other factors with any acceptable respondent.

LMHA reserves the right to waive any minor irregularity or technicalities in the proposals received. LMHA reserves the right to award without discussion (s) and may make an award to multiple vendors. The Request for Proposals selective process will involve the ranking of offerors by the appointed LMHA evaluation committee. Once the proposals have been evaluated, LMHA will negotiate with the Respondent (s) who fall within the competitive range. Fees for these services will be a negotiation factor as well as any other relevant factor identified by the evaluation committee.

#### *Preliminary Proposal Review*

The review process will be conducted in two parts. The preliminary review will consist of a review to be sure the proposal meets the minimum requirements (and mandatory conditions) specified in the RFP. If they do not, they will be rejected.

Proposals in response to the RFP must meet the following requirements:

- **The proposal must be received at the address indicated in the RFP no later than the time and date listed on the cover of this proposal.** Proposals not received at the designated address by the specified date will be rejected.
- Proposal signed by authorized vendor representative.
- Proposals that pass this initial review will be considered a valid proposal and will move on to the final review. Those that do not will be filed as rejected.

#### *Final Review*

- All valid proposals will be reviewed, evaluated, and rated by the Review Committee. The Review Committee will be composed of LMHA staff.
- The Review Committee will evaluate each proposal against the criteria in the RFP. During the review, the Committee may request additional information from the vendor. Such information requests and vendor's responses must always be in writing.
- All qualified proposals shall be reviewed by the Review Committee using the included evaluation criteria sheet. The number of evaluation points for each section varies according to the value assigned for that aspect of the program.

The Review Committee members may request information from sources other than the written proposal to evaluate vendor's programs. Other sources of information may include oral presentations by vendors, written responses to clarifying questions posed by the Review Committee, and vendor's history/experience in providing similar services.

Review Committee member rating sheets will be used to focus discussion. The final composite Evaluation Rating Sheet that includes the prioritized vendor's rankings will be maintained on file by LMHA. The end result of the review process is a prioritized list from best to least.

Written notification will be made to all vendors who submitted a proposal. In awarding the contract, LMHA's evaluation will include, but will not be limited to:

- Criteria for the Stage 1 review;
- Strength and stability of the vendor to provide the requested services;

- Ability to meet the project/program time lines;
  - Overall responsiveness and completeness of the proposal as well as the likelihood that, in LMHA’s opinion and at LMHA’s discretion, the proposal best meets or exceeds LMHA’s specifications;
  - Scope of service being proposed;
  - Customer references;
  - Cost of proposed service;
  - Any other factors considered relevant by LMHA and demonstrated by the proposal or investigation by LMHA; and
- Experience with a similar project/program of comparable size and scope

Responsive offerors will be notified of their non-selection after the preferred vendor is notified. If the successful vendor fails to execute the contract, LMHA may award the contract to another vendor whose proposal met the requirements of the RFP and any addenda. The period within which such an award of the contract may be made shall be subject to the written agreement between LMHA and the vendor.

### Contractor Selections

LMHA reserves the right to make an award based solely on the respondent or to negotiate further with one or more contractors. The contractor selected for the award will be chosen on the basis of the greatest benefit to the Authority, not necessarily on the basis of the lowest price.

### Appeals & Remedies

#### Contractor Right to Debriefing and Protests

It is the LMHA's policy to resolve all procurement and contractual issues informally at the Authority level, without litigation. Disputes shall not be referred to HUD until all administrative remedies have been exhausted at the Authority level. HUD will only review protests in cases involving violations of Federal law or regulations or failure of the Authority to review a complaint or protest.

Any actual or prospective contractor may protest the solicitation or award of a contract only for serious violations of the principles of LMHA’s Statement of Procurement. All protests shall be in writing. If the protest is regarding the solicitation, the notice of protest must be received prior to the solicitation deadline. If the protest is regarding the award, the notice of protest must be received within ten (10) business days after the issuance of the award notice. A written protest shall contain, at a minimum, the name, address and phone number of the protester; identification of the procurement, including solicitation or contract number; a statement of the reasons for the protest; supporting exhibits, evidence, or documents to substantiate any arguments; and the form of relief requested. The LMHA shall issue a decision as expeditiously as possible after receiving all relevant information requested.

Upon the conclusion of the solicitation period and issuance of the Award Notice, all Offerors shall have the right to a debriefing. The request for a debriefing must be made within 10 days from the date of Award Notice. The debriefing meeting may be held either by phone or in-person at LMHA’s office. If the debriefing is in-person, travel expenses shall be the sole responsibility of the Offeror and not LMHA.

## EVALUATION CRITERIA

The selective process will involve the ranking of proposals by the appointed LMHA evaluation committee.

Evaluation criteria to be used in reviewing proposals and their respective weights are as follows:

### General Evaluation Criteria Point Value (Total: 100 Points Maximum)

Max Value	FACTOR DESCRIPTION
30	<b>No. 1: Demonstrated Quality of Performance and Past Record of Professional Experience in Property Management</b> and in undertaking assignments similar to those described in the Scope of Services. Experience and reliability of the respondent's firm, and information that documents housing complex experience
	with 50 or more units, and experience with Public Housing/Low Income Tax Credit and experience in the State of Ohio, will strongly be considered. The experience should include experience in established Financial Management
	System and Tenant Database capability; and experience in administrating the delivery of resident social supportive services.
25	Managerial Capacity & Qualifications - required licenses and staff qualifications and experience.
25	<b>Operational Systems and Procedures</b> - provide sample reports, description of maintenance procedures, emergency procedures and accounting/internal controls.
15	<b>Proposed Fees and Estimated Operating Expenses</b> - Appropriateness of cost to scope of work.
5	<b>Hiring &amp; Subcontracting Strategies / Practices</b> - Describe the strategy for minority participation in the organization in hiring and subcontracting.
Max Value 100	<b>Total Points (Other than Section 3 Business Preference or Compliance Points)</b>

## **Section 3 Requirements**

Section 3 requirements apply to all projects and activities funded in whole or in part with covered funds. If any HUD funding is used for the project/activity, then the entire project budget is then subject to Section 3 requirements.

Section 3 requirements do not apply to any agreement or contract for the purchase of supplies and materials only.

It is LMHA's policy to achieve Section 3 goals by providing opportunities in one or more of the following areas:

### **A. Training and Employment Opportunities for Section 3 Residents**

When the Section 3 regulation is triggered by the need for new hires, LMHA and its contractors and subcontractors will make every effort within their disposal to the greatest extent feasible to attempt to interview and hire Section 3 residents amounting to at least 30% of the aggregate number of full-time new hires.

When hiring opportunities are offered and all requirements are met and remain equal, LMHA, contractors and subcontractors shall direct their efforts to interview and hire Section 3 residents in the order of priority preference provided below:

1. Residents at the housing development where the work is being performed (Category 1 residents).
2. Residents of other LMHA public housing developments and holders of housing choice vouchers (Section 8 rent assistance) managed by LMHA (Category 2 residents).
3. Participants in Youthbuild programs being carried out in the metropolitan area in which Section 3 covered assistance is expended (Category 3 residents).
4. Other Section 3 area residents (Category 4 residents).

### **B. Contracting Opportunities for Section 3 Business Concerns**

When the Section 3 regulation is triggered by the need for subcontracting a portion of the work to another business, LMHA and its contractors and subcontractors will make every effort within their disposal to the greatest extent feasible to attempt to subcontract:

1. **Building Trades:** At least 10% of the total dollar amount of all Section 3 covered contracts or purchase orders for building trades work, maintenance, repair, modernization, or development of public housing to Section 3 business concerns.
2. **Other contracts (Non-building trades):** For other Section 3 covered contracts or purchase orders that are not building trades work covered above, the goal is to subcontract at least 3% of the total dollar amount to Section 3 business concerns. This includes professional service contracts such as legal, architects, engineers, consultants, or any other contract or purchase order for services that are not building trades.

## **Self-Certification of Section 3 Residents and Section 3 Business Concerns**

In order to receive preference as a Section 3 resident or Section 3 business concern, the resident or business

must self-certify that they meet the eligibility requirements. (see Section 3 Form #4 and Section 3 Form #2, respectively).

### **Contractor Responsibilities in meeting Section 3 goals**

All contractors are held to the same Section 3 compliance requirements of LMHA as stated in its Section 3 policy. The LMHA Section 3 policy states that when the Section 3 regulation is triggered by a need for new hires or by a need to subcontract a portion of the work, every effort within the contractor's disposal must be made to the greatest extent feasible to direct all available employments, training, and contracting opportunities to Section 3 residents.

Contractors must also proactively facilitate compliance with Section 3 subject to the definition of a Section 3 covered contract. Contractors will have fulfilled their responsibility when they can provide evidence that the following have occurred in the case of interviewing, hiring, contracting, solicitation and recruitment effort:

1. Extra or greater efforts in notifying Section 3 residents of opportunities through posting job openings in the offices of procurement, in the local media and on the LMHA website;
2. Conveying that the hiring/contract work is a Section 3 Covered opportunity in any advertisement for bids / proposals by placing the following language in each advertisement/public notice and website "This job is covered under the requirements of Section 3 of the HUD Act of 1968".
3. Notifying subcontractors in each pre-bid meeting of the Section 3 requirements.
4. Providing "Section 3 Resident Self-Certification Forms" for employment at the contractor/subcontractor business offices.
5. Encouraging the training of Section 3 residents by the subcontractors.
6. Facilitating an opportunity or job fair for the contractor and subcontractor to meet interested Section 3 residents for possible employment.
7. Documenting actions taken to comply with Section 3 requirements including all results and impediments using the LMHA prescribed mechanism or form.
8. Posting all job sites funded by LMHA with a location or phone number of whom and how to apply for any opportunities for employment, training or contracting. The sign should be no smaller than a 24" x 24" and should specifically read "This project is covered under Section 3 of the HUD Act of 1968 which requires that any new opportunities be directed to low- and very low income persons in the community. Please contact \_\_\_\_\_ at \_\_\_\_\_ for information on any Employments, Contracting and Subcontracting opportunities.
9. Distributing or posting flyers advertising positions to be filled.
10. Notify the local workforce development board about open positions.

### **Other Economic Opportunities to achieve Contractor Compliance**

A contractor may provide one or more of the following "other economic opportunities" under this section:

1. Training and Employment: A detailed plan for training should be described in a written narrative and provided for LMHA review. Contractors seeking to provide training may identify a qualified training firm that has the proper experience working with low-income and public housing residents in particular. The contractor will procure the training/firm individual at its

expense to provide direct recruitment and solicitation to LMHA residents for employment related training. Verification of the agreement between the contractor and training firm/individual must be provided to LMHA’s Section 3 Compliance Coordinator.

2. **Other Results-Oriented Economic Opportunities:** Other Results -Oriented Economic Opportunities are programs designed to provide economic opportunities to Section 3 residents, including, but not limited to: Section 3 joint ventures, teaming agreements or combination of other economic opportunities. A contractor must submit to LMHA a plan detailing these “Other Results-Oriented Economic Opportunities” and receive an approval prior to implementation.

**Section 3 Forms**

Form #1: Section 3 Clause Acknowledgement - This is a mandatory form that is completed and returned by all contractors answering a solicitation.

Form #2: Section 3 Business Self-Certification Form – This form is to be submitted by a Section 3 Business that is seeking preference.

Form #3: Contractor Section 3 Assurance of Compliance and Action Plan – This mandatory form (6 pages) is to be returned with an action plan, list of subcontractors, and an outreach plan. Part 3 of the form is to be used by businesses who do not anticipate triggering Section 3 regulations and both boxes in Part 3 must be initialed.

Form #4 Section 3 Resident Self-Certification and Skills Data Form – this form can be returned if you are a Section 3 resident seeking preference, or it can be used during the interview and application process when hiring for a Section 3 Covered project.

**Section 3 Business Concern Preference Point Value (Total: 5 Points Maximum)**

Preference means, if at any time a contractor should bid or issue a response to a Request for Proposal (RFP) or Request for Qualifications (RFQ), and your price and qualifications or proposal are equal to any Non-Section 3 Business Concern, you will receive Preference in that contract award. Preference points shall be added to the total number of available rating points.

<b>Max Value</b>	<b>SECTION 3 BUSINESS PREFERENCE PARTICIPATION FACTORS</b>
<b>5</b>	<b>Resident-Owned Business Concern Entity</b> – A Business Concern that is 51% or more owned by Section 3 Resident(s). A Business claiming Section 3 status, because at least 30% of their permanent full-time employees are Section 3 residents; or within three years of the date of employment with the business concern were Section 3 residents. Or a joint venture with Resident-Owned Business concern. Or participation in Youthbuild.
<b>3</b>	<b>Direct hiring of Section 3 residents.</b> Supporting documentation required.
<b>1</b>	<b>Contractor provides training opportunities.</b> Supporting documentation required

<b>Max Value</b> 5	<b>Section 3 Business Preference Participation <u>Bonus</u> Points</b>
-----------------------	--

OR

**Non-Section 3 Business Concerns Compliance Requirements**

Non-Section 3 Business Concerns are required by LMHA to remain compliant with Section 3 for the life of the proposed contract. In compliance with 24 CFR 135 (Appendix, Section III., Item 3, iv), contract awards in competitive bidding processes such as a Request for Proposal (RFP), Request for Qualifications (RFQ), or Invitation for Bids (IFB) shall be made to the responsible firm whose proposal is most advantageous with respect to Section 3.

The following are contractor compliance points applied when evaluating bids/proposals received as the result of a RFP, RFQ or IFB selection. Compliance points shall be added to the total number of available rating points.

**Compliance chart below:**

<b>Max Value</b>	<b>SECTION 3 COMPLIANCE OPTION SELECTION FACTORS</b>
------------------	--

<b>5</b>	Direct hiring of Section 3 residents. Supporting documentation required. (Certified Payroll)
<b>3</b>	Joint venture with LMHA resident-owned business.
<b>1</b>	Commitment to train Section 3 Residents.
<b>Max Value</b> 5	<b>Section 3 Compliance Option Selection <u>Bonus</u> Points</b>

**Total Evaluation Criteria Point Value –General Evaluation Criteria AND Section 3 Bonus Points (Total: 105 Points Maximum)**



## PROPOSAL FORMAT

A hard copy proposal (1 original and 4 exact copies), properly indexed, complete with table of contents and clearly noted Sections; inclusive of an executive summary are to be submitted to the attention of “Sherry Tobin, Procurement Manager, Procurement & Contracts” via the instructions listed under “Delivery of Proposals” section of this RFP. The file must be labeled with the Respondent’s name, and RFP title, and RFP number. To simplify the process for evaluating proposals, and to assure each proposal receives the same review, all proposals must be submitted in the following format. Proposals must contain all the items listed here.

### Proposals must be indexed corresponding to the following format and lettering:

#### TABLE OF CONTENTS

##### **TAB (A) – LETTER OF TRANSMITTAL**

A letter of transmittal (preferably on letterhead) bearing the signature of an authorized representative of the firm and the name(s) of the individual(s) authorized to negotiate services and costs with LMHA. Authorized individual contact information, including phone number and email address shall be included within this letter.

##### **TAB (B) – ORGANIZATION**

Information about the company: size, structure, history and any relevant certifications as a Minority-owned or Disadvantaged Business Enterprise

##### **TAB (C) – STAFF QUALIFICATIONS AND EXPERIENCE**

##### **1) The Offeror should describe the qualifications of staff to be assigned to the Project.**

Descriptions should include:

- Project team make-up (only include resumes of staff to be assigned to the project.)
- Assigned Project Manager (the main liaison/contact person for LMHA)
- Overall supervision to be exercised (including how subcontractors will be handled)
- Professional Licenses or credentials held by team members, including broker of record license
- If any subcontractors are used, then all aforementioned information should be provided about each potential subcontractor.

**2) Experience - List assignments within the last four (4) years that best demonstrate the offeror's competence to perform work similar to the required Scope of Services, including:**

- Description of project and key participants
- Date started and completed
- A brief narrative of the project
- Contact person

**TAB (D) – SUPPORTING MATERIALS**

Provide materials that the offeror deems useful to further assist the Evaluation Panel in determining qualifications, including sample documents, a proposed “Detailed Estimate of Certain Annual Operating Expenses” (Attachment A), and sample reports from the accounting system that demonstrates reporting capability.

**TAB (E) – SCOPE OF SERVICES**

State specifically your intended practices addressing the materials in the “Scope of Services.” Please cite previous examples of providing such services and your organization’s commitment to meeting or exceeding the expectations and duties set forth.

**TAB (F) – COST PROPOSAL**

All submissions must include an initial fee proposal or methodology. Fee should be proposed as a percentage of Effective Gross Income (EGI) and cannot exceed 6% of EGI. Any additional fees and/or anticipated costs that are expected to be expensed to the owner need to be identified in the proposal and clearly explained and justified.

**TAB (G) – MBE/WBE PARTICIPATION**

The proposal should include percentage participation of MBE/WBE of the firms that comprise the offeror’s team. LMHA has established an administrative goal of 35% utilization of disadvantaged and historically underutilized businesses for performance of the work under this procurement.

**TAB (H) – REFERENCES**

Provide contact data for the project(s) listed in the “Statement of Experience and Qualifications.” Data information should include a phone number **and** an email address. Include at least three (3) organizations and contact information **(including email addresses)** where you have provided similar services within the last 24 months.

**TAB (I) – EXHIBITS**

(Exhibit 1) Complete and return Level of Interest Form at earliest opportunity.

(Exhibits 2-10) All other required information is set forth by each of the following exhibits. Return the ones marked “return” and place in Tab I.

(Attachment A) Detailed Estimate of Certain Annual Operating Expenses (complete and return in Tab D)

(Other) **Any remaining attachments/Appendices are for your information only and NOT to be returned.**

**Exhibit (1)** – Level of Interest Form (*Complete **and return promptly***)

**Exhibit (2)** – Proposal Request Form **return**

**Exhibit (3)** – Minority Business Enterprise Goals

**Exhibit (4)** - Contractor’s Certificate Concerning Equal Employment Opportunities  
(*Fill in completely*) **return**

**Exhibit (5)** - Non-Collusive Affidavit **return**

**Exhibit (6)** - Contractor/Vendor Qualifications Statement **return**

**Exhibit (7)** - Section 3 Forms (*Complete **and notarize***) **return**

**Exhibit (8)** – HUD 5369 C Certifications and Representation of Offerors (Non-Construction) **return**

**Exhibit (9)** – HUD 5369 B Instructions to Offerors (Non-Construction) **information only**

**Exhibit (10)** - 5370C – Part I and II General Conditions for Non-Construction Contracts **information only**

**Attachment A** – Detailed Estimate of Certain Annual Operating Expenses (place in TAB D)

**Attachment B**- Rent Schedules

**Appendix A** – Sample Property Management Agreement

**Appendix B**– Cost Control and Safe Harbor Standards



Lucas Metropolitan Housing Authority  
435 Nebraska Avenue, PO Box 477  
Toledo, Ohio 43697-0477  
419-259-9400 Fax 419-254-3495  
TDD 419-259-9529  
[www.lucasmha.org](http://www.lucasmha.org)

## Proposal Request Form

<b>Offeror:</b> _____ _____ _____	<b>Terms: N30</b>  <b>Quote Expiration Date:</b> _____
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### To Whom It May Concern:

We are currently developing a program of vendor sources. Therefore, we would appreciate a proposal from you on the service listed within the **Request for Proposals (RFP) #19-R001 / Professional Property Management Services**. **Due no later than January 29, 2019 at 3:00 p.m. ET**. Please forward this form and all documentation to mailing address email, or fax listed. Indicate when your price quote shall expire.

**Thank you,**  
Sherry Tobin  
Manager of Procurement and Contracts  
Lucas Metropolitan Housing Authority  
[stobin@lucasmha.org](mailto:stobin@lucasmha.org)

**PROPOSAL REQUEST FORM**

<b>Description of Services</b>	<b>Rate(s)</b>
<p>All submissions must include an initial fee proposal or methodology. Fee should be proposed as a percentage of Effective Gross Income (EGI), and cannot exceed 6% of EGI. Any additional fees and/or anticipated costs that are expected to be expensed to the owner need to be identified in the proposal and clearly explained and justified.</p> <p><b>Please attach additional sheets as necessary</b></p>	

Company Name \_\_\_\_\_

Federal I.D. # \_\_\_\_\_ Phone #: \_\_\_\_\_ Date: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

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

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



Lucas Metropolitan Housing Authority
435 Nebraska Avenue, PO Box 477
Toledo, Ohio 43697-0477
419-259-9400 Fax 419-254-3495
TDD 419-259-9529
www.lucasmha.org

LEVEL OF INTEREST
Professional Property Management Services
RFP #19-R001

GAUGE LEVEL OF INTEREST: So that we may gauge the level of interest in this Request for Proposal; if you have not previously done so, please advise us as to whether, or not, you anticipate delivering to us a submittal in response to this RFP. Please complete information below and return via mail, email at stobin@lucasmha.org or fax 419-254-3495.

Thank you for your interest in doing business with the LMHA and we look forward to receiving a submission from your company.

Sherry Tobin
Manager of Procurement and Contracts

ACKNOWLEDGEMENT:

- Will Submit
No Submission At This Time Due To:
I cannot comply with Specifications
I cannot meet delivery requirements
Other:
I do desire to be considered on future procurement contact lists. I have registered with your Vendor Registration List at the LMHA website ("Procurement"; then "Vendor Registration")
I do NOT desire to be considered on future procurement contact lists

Authorized Signature Date Company
Printed Name Email

## **SPECIAL NOTICE**

### **MINORITY BUSINESS ENTERPRISE GOALS**

#### **LUCAS METROPOLITAN HOUSING AUTHORITY**

In accordance with Executive Order 12432, all public housing authorities must establish minority business participation goals. A Minority Business Enterprise (MBE) is defined as a business enterprise that is 51 percent or more owned, controlled and actually operated by one or more persons who are classified as a part of a socially disadvantaged group. Examples of such groups include Blacks, American Indians, Alaskan Natives, Hispanics, Asians, and Pacific Islanders.

The MBE goal for public housing modernization/management/operations contracts is 35 percent of the dollar value of the total contracts awarded and purchases made.

The Board of Commissioners of the Lucas Metropolitan Housing Authority has adopted these Minority Business Enterprise participation goals, consistent with the Department of Housing and Urban Development.

The Lucas Metropolitan Housing Authority is committed and obligated to ensure that minority individuals and minority business enterprises are sufficiently represented.

The Board of Commissioners has established policy to evaluate the efforts of prime contractors to achieve the goals for minority workforce and minority business enterprise participation, to ensure that positive efforts are made.

All contractors are urged to exceed the above goals. The Lucas Metropolitan Housing Authority can provide the names of MBE subcontractors upon request.

**LUCAS METROPOLITAN HOUSING AUTHORITY**

**CONTRACTOR'S CERTIFICATION CONCERNING EEO**

COMPANY: \_\_\_\_\_

Sub Category	Total Employees	MINORITY EMPLOYEES										
		CAUCASION		AFRICAN AMERICAN		HISPANIC		NATIVE AMERICAN		ASIAN OR PACIFIC		
		M	F	M	F	M	F	M	F	M	F	
Officer / Supervisors												
Technicians												
Housing Sales/Rental Management												
Office / Clerical												
Service Workers												
Other												
<i>TRADE:</i>												
Journeyman												
Helpers												
Apprentices												
Other												
<i>TRADE:</i>												
Journeyman												
Helpers												
Apprentices												
Other												
<b>TOTAL</b>												
<b>TOTAL % (Please Complete)</b>												



**LUCAS METROPOLITAN HOUSING AUTHORITY**

---

I attest that the above information is true and correct.

\_\_\_\_\_

Print Name

\_\_\_\_\_

Title

\_\_\_\_\_

Date

\_\_\_\_\_

Signature

STATE OF OHIO

\_\_\_\_\_ COUNTY

I, the undersigned authority, a Notary Public in and for said County and in said State, hereby certify that, \_\_\_\_\_, whose name as \_\_\_\_\_ of \_\_\_\_\_ is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day, that, being informed of the contents of the foregoing conveyance, he/she, in his/her capacity as \_\_\_\_\_, and with full authority, executed the same voluntarily for and as the act of said Business entity.

Given under my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_

Notary Public

My Commission Expires

\_\_\_\_\_

NON-COLLUSIVE

**AFFIDAVIT**

State of \_\_\_\_\_)

County of \_\_\_\_\_)

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

That he is \_\_\_\_\_ the party making the foregoing proposal or bid, that such proposal or bid is genuine and not collusive or sham; that said bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham bid or to refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid price or affiant, or of that of any other bidder, or to secure any advantage against the Lucas Metropolitan Housing Authority or any person interested in the proposed contract; and that all statements in said proposal or bid are true.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019 .

Notary Public

My Commission expires \_\_\_\_\_.

## Contractor / Vendor Qualification Statement

(1) Prime \_\_\_\_ Sub-contractor \_\_\_\_ (This form must be completed by and for each).

(2) Name of Firm: \_\_\_\_\_ Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

(3) Street Address, City, State, Zip: \_\_\_\_\_

(4) Please attached a brief biography/resume of the company, including the following information:  
 (a) Year Firm Established; (b) Year Firm Established in [JURISDICTION]; (c) Former Name and Year Established (if applicable); (d) Name of Parent Company and Date Acquired (if applicable).

(5) Identify Principals/Partners in Firm (submit under Tab No. 5 a brief professional resume for each):

NAME	TITLE	% OF OWNERSHIP

(6) Identify the individual(s) that will act as project manager and any other supervisory personnel that will work on project; please submit under Tab No. 5 a brief resume for each. (Do not duplicate any resumes required above):

NAME	TITLE

(7) Proposer Diversity Statement: You must circle all of the following that apply to the ownership of this firm and enter where provided the correct percentage (%) of ownership of each:

Caucasian American (Male) \_\_\_\_\_%     
  Public-Held Corporation \_\_\_\_\_%     
  Government Agency \_\_\_\_\_%     
  Non-Profit Organization \_\_\_\_\_%

Resident- (RBE), Minority- (MBE), or Woman-Owned (WBE) Business Enterprise (Qualifies by virtue of 51% or more ownership and active management by one or more of the following:

Resident-Owned\* \_\_\_\_\_%     
  African American \_\_\_\_\_%     
  \*\*Native American \_\_\_\_\_%     
  Hispanic American \_\_\_\_\_%     
  Asian/Pacific American \_\_\_\_\_%     
  Hasidic Jew \_\_\_\_\_%     
  Asian/Indian American \_\_\_\_\_%

Woman-Owned (MBE) \_\_\_\_\_%     
  Woman-Owned (Caucasian) \_\_\_\_\_%     
  Disabled Veteran \_\_\_\_\_%     
  Other (Specify): \_\_\_\_\_%

WMBE Certification Number: \_

**Contractor / Vendor Qualification Statement**

WMBE Certification Number: \_\_\_\_\_

Certified by (Agency): \_\_\_\_\_

(NOTE: A CERTIFICATION/NUMBER NOT REQUIRED TO PROPOSE – ENTER IF AVAILABLE)

(8) Federal Tax ID No.: \_\_\_\_\_

(9) [APPROPRIATE JURISDICTION] Business License No.: \_\_\_\_\_

(10) State of \_\_\_\_\_ License Type and No.: \_\_\_\_\_

(11) Worker's Compensation Insurance Carrier: \_\_\_\_\_  
Policy No.: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

(12) General Liability Insurance Carrier: \_\_\_\_\_  
Policy No. \_\_\_\_\_ Expiration Date: \_\_\_\_\_

(13) Professional Liability Insurance Carrier: \_\_\_\_\_  
Policy No. \_\_\_\_\_ Expiration Date: \_\_\_\_\_

(14) Debarred Statement: Has this firm, or any principal(s) ever been debarred from providing any services by the Federal Government, any state government, the State of \_\_\_\_\_, or any local government agency within or without the State of \_\_\_\_\_? Yes  No

If "Yes," please attach a full detailed explanation, including dates, circumstances and current status.

(15) Disclosure Statement: Does this firm or any principals thereof have any current, past personal or professional relationship with any Commissioner or Officer of the HA? Yes  No   
If "Yes," please attach a full detailed explanation, including dates, circumstances and current status.

(16) Non-Collusive Affidavit: The undersigned party submitting this proposal hereby certifies that such proposal is genuine and not collusive and that said proposer entity has not colluded, conspired, connived or agreed, directly or indirectly, with any proposer or person, to put in a sham proposal or to refrain from proposing, and has not in any manner, directly or indirectly sought by agreement or collusion, or communication or conference, with any person, to fix the proposal price of affiant or of any other proposer, to fix overhead, profit or cost element of said proposal price, or that of any other proposer or to secure any advantage against the HA or any person interested in the proposed contract; and that all statements in said proposal are true.

(17) Verification Statement: The undersigned proposer hereby states that by completing and submitting this form he/she is verifying that all information provided herein is, to the best of his/her knowledge, true and accurate, and agrees that if the HA discovers that any information entered herein is false, that shall entitle the HA to not consider nor make award or to cancel any award with the undersigned party.

\_\_\_\_\_  
**Signature**                      **Date**                      **Printed Name**                      **Company**  
**Email Address:**



**Section 3 Form #1: SECTION 3 CLAUSE ACKNOWLEDGEMENT**

**Economic Opportunities for Low- and Very Low-Income Persons (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.

I have read and understand these requirements of this Section 3 funded project:

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

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

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Section 3 Form #2: SECTION 3 BUSINESS SELF-CERTIFICATION FORM**



<p><b>Please return this form to the following address:</b></p> <p><i>Martice Bishop Lucas Metropolitan Housing Authority 201 Belmont Avenue Toledo, OH 43604-0477</i></p>	<p><b>LMHA's Section 3 Self Certification</b></p> <p>For assistance completing the certification form, please email: <i>Martice Bishop at MBishop@lucasmha.org</i></p>
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**Section 3 Business Criteria:** Your business is eligible for Section 3 Business Certification if it meets any one of the following criteria. Please note that the definition of Section 3 qualified person is on Section 3 Form #3, "Section 3 Resident Self-Certification Form."

- 1. Fifty-one percent or more of your business is owned by a Section 3 resident or residents.
- 2. Thirty percent or more of your permanent, full-time employees are Section 3 residents.
- 3. You can provide evidence of a commitment to subcontract in excess of 25% of the amount of all subcontracts to Section 3 businesses: (a) that are fifty-one percent or more owned by public housing residents or (b) that has thirty percent or more of their permanent, full-time employees as public housing residents.

**Section 3 Business Certification Statement:** I hereby certify to the U.S. Department of Housing and Urban Development (HUD) and to Lucas Metropolitan Housing Authority that all of the information on this form is true and correct. I understand that it is my responsibility to conduct any due diligence necessary to make this certification and to maintain documentation establishing my Section 3 Business concern status. I also understand that failure to complete this form completely and accurately may result in debarment or other administrative remedies available to HUD, and criminal or civil penalties under federal, state, and local laws.

- My business is a Section 3 business in accordance with the standard checked above under Section 3 Business Criteria.
- My business is not a Section 3 business.

Signature:		Date Signed:
Name:	Title:	
Company Name		
Address		
Telephone Number		
Type of Business: (Check One): <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Other		



**Section 3 Form #3: CONTRACTOR SECTION 3 ASSURANCE OF COMPLIANCE AND ACTION PLAN (p. 1 of 7)**

**PART I-- Purpose:** To ensure that regulations promulgated under 24 CFR Part 135 “Economic Opportunities for Low- and Very Low-Income Persons” is met, LMHA has developed and approved a Section 3 Policy for LMHA. Information on specific compliance with Section 3 is found in LMHA’s Section 3 Policy, or in the regulations at 24 CFR Part 135.

This form, along with all related required documents included shall serve as the ‘assurance of compliance’ certification and action plan as required in the bid documents, supplemental general conditions, and required forms for the contract for any HUD work funded by LMHA.

Name of Business: \_\_\_\_\_

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

Contract Name/Solicitation #: \_\_\_\_\_

Total amount of Bid: \_\_\_\_\_

**PART II: PRIOR COMPLIANCE CERTIFICATION**

I am certifying that my business has complied with the HUD Section 3 regulations in its past HUD contracts/purchase orders.

\_\_\_\_\_  
Signature/Title

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

**PART III: IS SECTION 3 TRIGGERED BY THIS CONTRACT?**

**IF CONTRACTOR DOES NOT ANTICIPATE TRIGGERING THE SECTION 3 REGULATIONS, YOU MUST INITIAL BOTH BOXES BELOW:**

I do not anticipate hiring any new permanent, temporary, or seasonal employees on this contract.

I do not anticipate subcontracting any portion of the work on this contract.

If you checked both boxes, do NOT check any other boxes or select any other options on this form! Review all other pages and execute the attestation and notarized signature on page 7 Form #3.

**IMPORTANT:** IF THIS CHANGES AT ANY POINT DURING YOUR CONTRACT, YOU MUST IMMEDIATELY CONTACT YOUR LMHA CONTRACT CONTACT AS WELL AS LMHA SECTION 3 Compliance Coordinator, Martice Bishop: MBishop@lucasmha.org

**Section 3 Form #3: CONTRACTOR SECTION 3 ASSURANCE OF COMPLIANCE AND ACTION PLAN (p. 2 of 7)**

**PART IV: CONTRACTING/SUBCONTRACTING NEEDS:**

If you plan to subcontract, please list the proposed subcontractors and amounts below. Attach a Section 3 Business Concern Self-Certification form for each Section 3 Business identified.

<b>Subcontractor Name</b>	<b>Work to be performed (Building trade or other type of work)</b>	<b>Are they Section 3 Business? Yes/No</b>	<b>Contract Amount</b>	<b>% of Total Contract</b>

*Use an additional sheet if required*

**Total amount to be sub-contracted to Section 3 Business Concerns: \$\_\_\_\_\_**

**Percentage of total \$ value of bid/contract: \_\_\_\_\_**

**IMPORTANT:** Should the scope of work or needs of the contractor change, the contractor shall, to the greatest extent feasible, assure that subcontracts be awarded to Section 3 business concerns and shall immediately contact your LMHA contract contact as well as LMHA Section 3 Coordinator.



**Section 3 Form #3: CONTRACTOR SECTION 3 ASSURANCE OF COMPLIANCE AND ACTION PLAN (p. 3 of 7)**

**PART V: WORKFORCE NEEDS AND HIRING PLAN**

**Preliminary Statement for Workforce Needs:** LMHA intends to meet Section 3 compliance at the highest level and it is our intent to identify any short-term and long-term employment or contracting opportunities for qualified Section 3 persons and business concerns during the course of your contract funded by LMHA via its contractors. Please list the status of all planned employment position and opportunities for this contract. **Preference for all opportunities must be given to low- and very low-income residents if they qualify. If awarded a contract, you are required to provide a list of your aggregate workforce on this project. Any changes to that workforce during the project will constitute new hires. You are hereby notified that you must notify LMHA or contractor (respectively) overseeing your contract of any new hire opportunities that arise during the life of your contract. Anticipated workforce list may be provided on a separate sheet or in a different format.**

1. List Job Title/Trade	2. Total # of Employees Needed to complete Scope of Work by Job Title	3. Total # from Current Staff	4. Of the total # in column (3), how many are Section 3 Hires within the past 3 years?	Total # of New Hires Needed (Column 2 – Column 3)	Total # of New Hires expected to be Section 3 Residents
<b>TOTALS</b>					

*Use an additional sheet if required*

**PART VI. OTHER REQUIREMENTS**

Outreach Plan:

Check all methods you will employ to hire Section 3 residents. 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) other methods you will employ:

- The local community newspaper(s)
- The most widely distributed newspaper
- LMHA website
- LMHA properties management offices in a conspicuous location
- Homeless service agencies
- Local HUD-supported housing communities
- Local Workforce Board
- Other locations as approved by LMHA
- Email blast residents on LMHA Section 3 Resident List
- Post notices on social media controlled by LMHA

**Documentation of “To the Greatest Extent Feasible”:**

The contractor will work with LMHA Section 3 Coordinator and other designated staff to notify residents of any opportunities afforded under the contract. The contractor will collaborate with LMHA by giving preference of any employment opportunities to the Section 3 persons or business concerns.

The contractor and subcontractor(s) shall recruit or attempt to recruit from LMHA’s Section 3 area, based on the priority order in LMHA’s Section 3 Plan, the necessary number of low-income and very low-income residents through documentation of their efforts and of any impediments to comply. LMHA’s contractors and subcontractors shall:

1. Maintain a list of all low-income area residents who have applied, either on their own or from referral from any source, and employ such person if otherwise qualified and if a vacancy exists.
2. Review and consider the Section 3 Resident List provided by LMHA prior to making new hires. If those hired are not Section 3 residents, or are in a lower preference category, the Contractor must explain in writing the qualifications that those on Section 3 Resident List lacked, or other reason for non-hire (e.g., job offer declined).
3. Provide evidence that the contractor has not filled vacant employment positions in its workforce immediately prior to undertaking work in an attempt to circumvent Section 3 regulations.

Review and determine if low-income and very low-income residents meet minimum hiring qualifications. Applicants meeting such minimum qualifications, but not hired due to lack of job openings or for other operations reasons, will be placed on a priority-hiring list and offered positions upon the occurrence of the first available appropriate job opening.

**Recordkeeping:**

The contractor shall maintain on file all records related to employment and job training of low-income and very low-income residents or other such records, advertisements, legal notices, brochures, flyers, publications, assurances of compliance from subcontractors, etc., in connection with this contract. If there is a report that is needed as part of the submission, you agree to provide it timely. The contractor shall, upon request, provide such records or copies of records to LMHA, its staff, or agents.

**Reports:**

The contractor shall provide reports as required in connection with the contractor specifications. All certified and regular payrolls shall clearly detail which employees qualify under Section 3.

**Certification:**

The contractor will certify that any vacant employment positions, including training positions, that filled...

- (1) after the contractor is selected but before the contract is executed; and
- (2) with persons other than Section 3 residents

...were not filled to circumvent the subcontractor's obligations under 24 CFR Part 135.

**Other Economic Opportunities:**

If a contractor has demonstrated that it has no need or plans to subcontract or hire, and can demonstrate that it has attempted, to the greatest extent feasible, to hire/contract Section 3 residents and/or contractors, it has fully complied and may move forward and secure non-Section 3 persons or firms.

If a contractor does not trigger the requirements of Section 3 but chooses to offer other economic opportunities such as training, mentoring, or business development for Section 3 residents of LMHA, it may offer to do so in a thorough written plan to the Section 3 Coordinator. These opportunities must be described in a written plan on how the contractor will offer other economic opportunities expressing the outreach, number of persons to be affected, and outcomes.

A contractor that has a need to hire or sub-contract may not use other economic opportunities as a substitute to attempt to meet hiring or contracting goals; the contractor must still demonstrate how it attempted to the greatest extent feasible, to meet the goals.

**Grievance and Compliance:**

The contractor or sub-contractor hereby acknowledges that they understand that any low-income and very low-income resident of the project area, for him/her or as representatives of persons similarly situated, seeking employment or job training opportunities in the project area, or any eligible business concerns seeking contract opportunities may file a grievance if efforts to the greatest extent feasible were not executed. The grievance must be filed with HUD not later than one hundred eighty (180) calendar days from the date of the action (or omission) upon which the grievance is based.

### SECTION 3 CONTRACT COMPLIANCE CURE AND TERMINATION PROCESSES (p. 6 of 7)

This language is a component of contract compliance with the work contractors and sub-contractors including developers respond to in LMHA solicitations. The full requirements are provided in the Section 3 Clause found elsewhere in this package or in the HUD forms 5370-C or 5370 C1 as may be applicable.

All contractors claiming a Preference in contracting by meeting any of the three Preference requirements including a Resident Owned Business, Hiring 30% of New Hires and/or Sub-contracting at least 25% of contract award to a Section 3 Concern shall maintain that status throughout the life of the contract. Failure to meet this requirement will result in penalties up to and including contract termination. Any contractor triggering the regulation by doing any hiring or contracting once they are awarded the contract through contract execution must comply with the Section 3 requirements by executing the efforts on their Certification and Action Plan in accordance with LMHA Section 3 Action Plan.

LMHA shall execute these remedies to achieve compliance in this order:

- A. Based on the first observation or report of non-compliance with Section 3, the contractor will be sent an e-mail from LMHA notifying them of their non-compliance issue. The contractor will have until the next payroll or 14 calendar days, whichever is lesser to bring the contract into compliance.
- B. If at any time a contractor fails to bring the contract into compliance, LMHA must withhold all future payments until the contract is in compliance.
- C. The contractor shall have up to 15 business days from the most recent notice of non-compliance to meet compliance as a final cure period or justify in writing to LMHA why it cannot meet compliance. LMHA must render a response to the contractor within 10 business days of receipt of its letter of reason for non-compliance. If LMHA deems the cause to be unacceptable, at its option, LMHA can extend the cause period one time for up to 5 days to allow the contractor to identify and secure other compliance options, or
- D. If the contractor fails to take any corrective action to bring the contract into compliance within seven (7) business days from the most recent notice of non-compliance, or LMHA does not accept any of the contractor's corrective plans or justifications for non-compliance, LMHA must terminate the contract immediately. **All funds due to the contractor shall be held** and a financial workout of the agreement shall proceed within 24 hours of termination. The workout is to include a contract deduct equal to the total Section 3 contract violation of opportunities provided to non-Section 3 residents or business because they were not offered according to the contract and regulation award. All remaining funds can be paid out based on work satisfactorily completed per the agreement.

Any contractor claiming to meet Section 3 compliance by committing to hire residents, fund training itself **shall meet compliance within seven (7) calendar days of contract start** or LMHA shall halt all payments to the contractor and its sub-contractors related to the agreement and the actions listed in steps A-D in this Section shall apply.

**Section 3 Form #3: CONTRACTOR SECTION 3 ASSURANCE OF COMPLIANCE AND ACTION PLAN (p. 7 of 7)**

**ATTESTATION:**

I attest that the above information is true and correct and that by signing below, the Contractor hereby agrees to comply with Section 3 requirements.

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

Name of Authorized Officer: \_\_\_\_\_

Title of Authorized Officer: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**NOTARY REQUIRED**

STATE:

COUNTY:

I, the undersigned a Notary Public in and for said authority and in said State, hereby certify that, \_\_\_\_\_, whose named as \_\_\_\_\_ (Title) of \_\_\_\_\_ (Company) is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day, that, being informed of the contents of the foregoing conveyance, he/she, in his/her capability as \_\_\_\_\_ (Officer Title), and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public      My Commission Expires: \_\_\_\_\_ {SEAL}

**LUCAS METROPOLITAN HOUSING AUTHORITY**  
**SECTION 3 CORE EMPLOYEE REPORT**

*Construction Contractors must submit a company core employee list comprised of current employees hired prior to Section 3-covered contract award. You may attach additional pages as needed.*

<b>Company Name:</b>		<b>Date:</b>
<b>Project Name:</b>		
<b>Contract Number:</b>		<b>Start Date:</b>
<b>Address:</b>		
<b>City, State Zip:</b>		
<b>Phone:</b>		
<b>Email:</b>		

#	Name	Hire Date	Section 3 Resident	Job Type
1			<input type="checkbox"/>	
2			<input type="checkbox"/>	
3			<input type="checkbox"/>	
4			<input type="checkbox"/>	
5			<input type="checkbox"/>	
6			<input type="checkbox"/>	
7			<input type="checkbox"/>	
8			<input type="checkbox"/>	
9			<input type="checkbox"/>	
10			<input type="checkbox"/>	
11			<input type="checkbox"/>	
12			<input type="checkbox"/>	
13			<input type="checkbox"/>	
14			<input type="checkbox"/>	
15			<input type="checkbox"/>	
16			<input type="checkbox"/>	
17			<input type="checkbox"/>	
18			<input type="checkbox"/>	
19			<input type="checkbox"/>	
20			<input type="checkbox"/>	
21			<input type="checkbox"/>	
22			<input type="checkbox"/>	
23			<input type="checkbox"/>	
24			<input type="checkbox"/>	
25			<input type="checkbox"/>	

Submitted by \_\_\_\_\_ Signature \_\_\_\_\_

**For assistance please contact:**

Martice Bishop, LMHA Section 3 Compliance Coordinator at 419 259-9441, mbishop@lucasmha.org



**Section 3 Form #4-- SECTION 3 LMHA RESIDENT SELF-CERTIFICATION AND SKILLS DATA FORM (Page 1 of 2)**

The purpose of this form is to comply with HUD Section 3 administration and certification regulations.

**Printed Name of Individual:** \_\_\_\_\_

**My home address is (must be a street address and NOT a P.O. Box number):**

Street Address \_\_\_\_\_ Apt Number \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

**Phone #:** \_\_\_\_\_ **Email Address:** \_\_\_\_\_

I certify that I am a legal resident of the United States and meet the income eligibility and federal guidelines for a Section 3 Resident below:

**To qualify as a Section 3 Resident, you must meet one of the following standards:**

1. Be a public housing resident or a Housing Choice Voucher program participant (Section 8 rent assistance voucher) managed by LMHA; OR
2. Be a low income or very low-income person who resides in the service area where Lucas Metropolitan Housing Authority serves including the total service area in Lucas County Ohio, Monroe County Michigan, Fulton County Ohio and Wood County Ohio with the exception of the city of Bowling Green is located and whose total household income does not exceed the following amounts:

*Table of 2018 Adjusted Median Income for Lucas Metropolitan Housing Authority*

Family Size	1 Person	2 Persons	3 Persons	4 Persons	5 Persons	6 Persons	7 Persons	8 Persons
Household Income	34,450	39,400	44,300	49,200	53,150	57,100	61,050	64,950

(Check all that apply):

- I am a public housing resident (Name of housing development: \_\_\_\_\_)
- I am a Section 8 rent assistance participant with LMHA (have a Housing Choice Voucher)
- I live in the service area of the Housing Commission (Lucas Metropolitan Housing Authority)

My total annual household income is \$\_\_\_\_\_ and there are a total of \_\_\_\_\_ people living in my household.

**Section 3 Form #4-- SECTION 3 LMHA RESIDENT SELF-CERTIFICATION AND SKILLS DATA FORM (Page 2 of 2)**

- Graduated High School or GED Yes No
- Read & Speak English Fluently Yes No
- Graduated College, Trade, or Technical School Yes No

Please list degree or certifications: \_\_\_\_\_

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

- Drywall Hanging    Drywall Finishing    Interior Painting    Framing    Welding  
HVAC    Electrical    Interior Plumbing    Siding    Metal/Steel Work  
Cabinet Hanging    Door Replacement    Trim/Carpentry    Heavy Equipment Operator  
Exterior Plumbing    Exterior Framing    Stucco    Construction Cleaning  
Concrete/Asphalt Work    Roofing    Landscaping    Fencing    Window/Door Repl.  
Telephone Customer Service    Personal Care Aide    Receptionist    Teaching/Training  
Sales    Data Entry    Cleaning    Administrative/Clerical  
Driver's License    Commercial Driver's License (CDL)  
Other \_\_\_\_\_    Other \_\_\_\_\_  
Other \_\_\_\_\_    Other \_\_\_\_\_

I am interested in:  **Training opportunities**  **Employment Opportunities**  **Both**

I hereby certify to the U.S. Department of Housing and Urban Development (HUD) and to Lucas Metropolitan Housing Authority that all of the information on this form is true and correct. I attest under penalty of perjury that my total household income and household size is as shown above, and that proof of this information may be requested in the future. 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 also understand that failure to complete this form completely and accurately may result in other administrative remedies available to HUD. Finally, I authorize Lucas Metropolitan Housing Authority to include my name on a list of Section 3 Residents seeking employment and to include my contact information so that contractors may contact me.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



# Certifications and Representations of Offerors Non-Construction Contract

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

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

## 1. Contingent Fee Representation and Agreement

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

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

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

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

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

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

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

For the purpose of this definition, minority group members are:

(Check the block applicable to you)

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

## 3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

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

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

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

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

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

#### 4. Organizational Conflicts of Interest Certification

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

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

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

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

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

#### 5. Authorized Negotiators (RFPs only)

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

#### 6. Conflict of Interest

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

#### 7. Offeror's Signature

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

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Signature & Date:

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Typed or Printed Name:

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Title:

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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.

(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:]

# 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. 3/31/2020)

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 \$105,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 968.105) **greater than \$2,000 but not more than \$150,000 - use Section II;** and
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$150,000 – use Sections I and II.**

### Section I - Clauses for All Non-Construction Contracts greater than \$150,000

#### 1. Definitions

The following definitions are applicable to this contract:

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

#### 2. Changes

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

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

#### 3. Termination for Convenience and Default

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

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

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

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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

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

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

### 13. Interest of Members of Congress

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

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

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

### 15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

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

(ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

(ii) Any reasonable payment to a person, other than an officer or employee of a

person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

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

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

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

(iii) Selling activities by independent sales representatives.

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

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

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

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

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

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



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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 Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the

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

## 17. Dissemination or Disclosure of Information

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

## 18. Contractor's Status

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

## 19. Other Contractors

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

## 20. Liens

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

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

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

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

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

## **22. Procurement of Recovered Materials**

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

# General Conditions for Non-Construction Contracts

## Section II – (With 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. 3/31/2020)

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-5370C 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 905.200) greater than \$2,000 but not more than \$100,000 - use Section II; and
- 3) Maintenance contracts (including nonroutine maintenance), greater than \$100,000 – use Sections I and II.

### Section II – Labor Standard Provisions for all Maintenance Contracts greater than \$2,000

#### 1. Minimum Wages

- (a) All maintenance laborers and mechanics employed under this Contract in the operation of the project(s) shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development which is attached hereto and made a part hereof. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination, including any additional classifications and wage rates approved by HUD under subparagraph 1(b), shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- (b) (i) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate only when the following criteria have been met:
  - (1) The work to be performed by the classification required is not performed by a classification in the wage determination;
  - (2) The classification is utilized in the area by the industry; and
  - (3) The proposed wage rate bears a reasonable relationship to the wage rates contained in the wage determination.(ii) The wage rate determined pursuant to this paragraph shall be paid to all workers performing work

in the classification under this Contract from the first day on which work is performed in the classification.

#### 2. Withholding of funds

The Contracting Officer, upon his/her own action or upon request of HUD, shall withhold or cause to be withheld from the Contractor under this Contract or any other contract subject to HUD-determined wage rates, with the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor the full amount of wages required by this clause. In the event of failure to pay any laborer or mechanic employed under this Contract all or part of the wages required under this Contract, the Contracting Officer or HUD may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment or advance until such violations have ceased. The Public Housing Agency or HUD may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

#### 3. Records

- (a) The Contractor and each subcontractor shall make and maintain for three (3) years from the completion of the work records containing the following for each laborer and mechanic:
  - (i) Name, address and Social Security Number;
  - (ii) Correct work classification or classifications;
  - (iii) Hourly rate or rates of monetary wages paid;
  - (iv) Rate or rates of any fringe benefits provided;
  - (v) Number of daily and weekly hours worked;
  - (vi) Gross wages earned;
  - (vii) Any deductions made; and
  - (viii) Actual wages paid.
- (b) The Contractor and each subcontractor shall make the records required under paragraph 3(a) available for inspection, copying, or transcription by authorized representatives of HUD or the HA and shall permit such representatives to interview employees during working hours on the job. If the Contractor or any subcontractor fails to make the required records available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds.

#### 4. Apprentices and Trainees

- (a) Apprentices and trainees will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in:
  - (i) A bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration (ETA), Office of

Apprenticeship Training, Employer and Labor Services (OATELS), or with a state apprenticeship agency recognized by OATELS, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice; A

- (ii) A trainee program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, ETA; or
- (iii) A training/trainee program that has received prior approval by HUD.

- (b) Each apprentice or trainee must be paid at not less than the rate specified in the registered or approved program for the apprentice's/trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices and trainees shall be paid fringe benefits in accordance with the provisions of the registered or approved program. If the program does not specify fringe benefits, apprentices/trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.
- (c) The allowable ratio of apprentices or trainees to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the employer as to the entire work force under the approved program.
- (d) Any worker employed at an apprentice or trainee wage rate who is not registered in an approved program, and any apprentice or trainee performing work on the job site in excess of the ratio permitted under the approved program, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.
- (e) In the event OATELS, a state apprenticeship agency recognized by OATELS or ETA, or HUD, withdraws approval of an apprenticeship or trainee program, the employer will no longer be permitted to utilize apprentices/trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

## 5. Disputes concerning labor standards

- (a) Disputes arising out of the labor standards provisions contained in Section II of this form HUD-5370-C, other than those in Paragraph 6, shall be subject to the following procedures. Disputes within the meaning of this paragraph include disputes between the Contractor (or any of its subcontractors) and the HA, or HUD, or the employees or their representatives, concerning payment of prevailing wage rates or proper classification. The procedures in this section may be initiated upon HUD's own motion, upon referral of the HA, or upon request of the Contractor or subcontractor(s).
  - (i) A Contractor and/or subcontractor or other interested party desiring reconsideration of findings of violation by the HA or HUD relating to the payment of straight-time prevailing wages or classification of work shall request such reconsideration by letter postmarked within 30 calendar days of the date of notice of findings issued by the HA or HUD. The request shall set

forth those findings that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The request shall be directed to the appropriate HA or HUD official in accordance with instructions contained in the notice of findings or, if the notice does not specify to whom a request should be made, to the Regional Labor Relations Officer (HUD). The HA or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.

- (b) Disputes arising out of the labor standards provisions of paragraph 6 shall not be subject to paragraph 5(a) of this form HUD-5370C. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this paragraph 5(b) include disputes between the Contractor (or any of its subcontractors) and the HA, HUD, the U.S. Department of Labor, or the employees or their representatives.

## 6. Contract Work Hours and Safety Standards Act

The provisions of this paragraph 6 are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" includes watchmen and guards.

- (a) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in paragraph 6(a), the Contractor and any

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subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to the District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

- (c) **Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the U.S. Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Contract or any federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

## **7. Subcontracts**

The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this Section II and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the provisions contained in these clauses.

## **8. Non-Federal Prevailing Wage Rates**

Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under state law to be prevailing, with respect to any employee in any trade or position employed under the Contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

**Lucas Metropolitan Housing Authority**  
2019 Public Housing Flat Rents Schedule

**ATTACHMENT B**

**Rent Schedules**

AMP #	Property	Building Type	Bedroom Size	Current FMR	80% of Current FMR	Less Utility Allowance	Flat Rents
134	Collingwood Green Phase I	GWU	1	\$560.00	\$448.00	\$35.00	\$413.00
			2	\$727.00	\$581.60	\$42.00	\$539.60
135	Collingwood Green Phase II	Rowhouse/Townhouse	2	\$727.00	\$581.60	\$80.00	\$501.60
			3	\$994.00	\$795.20	\$90.00	\$705.20
					<b>PBRA RAD Rent</b>		
	Parqwood	GWU	0	\$482.00	\$482.00	n/a	<b>RAD</b>
	Parqwood	GWU	1	\$536.00	\$536.00	n/a	<b>RAD</b>
	Parqwood	GWU	2	\$661.00	\$661.00	n/a	<b>RAD</b>

**Projected Rents for Collingwood Green Phase III**

NUMBER OF UNITS	NUMBER OF BED-ROOMS	NUMBER OF BATHROOMS	SQUARE FOOTAGE	AFFORDABLE TO WHAT % OF AMGI?	OCCUPIED BY WHAT % OF AMGI?	GROSS RENTS	TENANT PAID UTILITIES	RENTAL SUBSIDY	NET RENTS	MONTHLY RENTAL INCOME
3	2	1.0	1221	30%	30%	\$ 200	\$ 72	\$ 500	\$ 628	\$ 1,884
3	3	1.5	1512	30%	30%	\$ 200	\$ 72	\$ 719	\$ 847	\$ 2,541
3	3	1.5	1512	30%	30%	\$ 200	\$ 72	\$ 719	\$ 847	\$ 2,541
4	3	1.5	1512	50%	60%	\$ 200	\$ 72	\$ 719	\$ 847	\$ 3,388
4	3	1.5	1512	50%	60%	\$ 200	\$ 72	\$ 768	\$ 896	\$ 3,584
5	2	1.0	1221	50%	60%	\$ 200	\$ 72	\$ 500	\$ 628	\$ 3,140
3	2	1.0	1221	60%	60%	\$ 200	\$ 72	\$ 500	\$ 628	\$ 1,884
3	4	2.0	1600	60%	60%	\$ 200	\$ 72	\$ 719	\$ 847	\$ 2,541
27	2	1.0	1221	60%	60%	\$ 816	\$ 72		\$ 744	\$ 20,088
									\$ -	\$ -
									\$ -	\$ -
										Monthly Rental Income: \$ 41,591

**APPENDIX A**

**SAMPLE PROPERTY MANAGEMENT AGREEMENT**

## **PROPERTY MANAGEMENT AGREEMENT**

This Property Management Agreement (this “Agreement”) is made effective as of the \_\_\_ day of \_\_\_\_\_, 2011, by and between Collingwood Green Phase I, L.P.; an Ohio limited partnership (“Owner”), and \_\_\_\_\_, an Ohio public body corporate and politic (“Manager”).

### **RECITALS**

A. Owner leases certain real property pursuant to a ground lease, located in the City of Toledo, Lucas County, Ohio, together with all improvements, appurtenances and equipment located thereon, including 65 low-income senior housing units known as Collingwood Green Phase I, 33 of which units will be operated as public housing pursuant to the Act (as defined below) and subject to all the requirements thereof (the “Project”).

B. Owner wishes to obtain the services of Manager in connection with the management of the Project subject to the terms and provisions of this Agreement; and Manager wishes to perform such services for a fee in exchange for the management fee provided herein.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, the parties hereto mutually agree as follows:

### **ARTICLE 1** **DEFINITIONS**

#### **1.1 Definitions.**

- a) “ACC” means the Consolidated Annual Contributions Contract between the Authority and HUD, as amended from time to time (including, without limitation, as amended by a Mixed Finance Amendment relating to the Project dated on or about the date hereof), but only to the extent such contract, as amended, is applicable to the Public Housing Units or the Project. The ACC is the means by which operating subsidies are provided to the Authority by HUD pursuant to the Act.
- b) “Act” means the United States Housing Act of 1937 (42 U.S.C. §1437 et seq.), as amended from time to time.
- c) “Applicable Public Housing Requirements” means the Act; HUD regulations thereunder (and to the extent applicable, any HUD-approved waivers of regulatory requirements); any other federal laws, regulations, HUD notices, and Executive Orders pertaining to public housing as those requirements may be amended from time to time; the ACC (as amended by the Mixed-Finance Amendment); the HUD approved Declaration of Restrictive Covenants in favor of HUD; (including any documents incorporated into any of them by amendment, exhibit or reference); the Regulatory and Operating Agreement and the A&O Policy (as set forth in the Authority’s PHA Plan approved under 24 CFR Part 903), as such applies to the Public Housing Units. In the event of any conflict among the foregoing authorities, then the Act, the Mixed Finance ACC Amendment and the Declaration of Restrictive Covenants (in that order of primacy, in the event of conflict there among, and including any waivers granted pursuant thereto or pursuant to HUD regulations applicable to privately owned mixed-finance communities such as the Development) shall control.



- d) "A&O Policy" means the Admissions and Continued Occupancy Policy adopted by the Owner with respect to the Project, as amended from time to time with the written approval of the Authority.
- e) "Authority" means the Lucas Metropolitan Housing Authority.
- f) "Code" means the Internal Revenue Code of 1986, as amended.
- g) "HUD" means the United States Department of Housing and Urban Development.
- h) "Investor" shall mean \_\_\_\_\_, its successors and assigns.
- i) "LIHTC" means (as the context requires) the Low Income Housing Tax Credit program, as described in and governed by the Code, or the tax credits allocated to the Project thereunder.
- j) "Management Plan" means the management plan for each Project, which has been adopted by the Owner for the current fiscal year of the Project, after review and approval by the Authority.
- k) "Non-Public Housing Units" means the 32 LIHTC units in the Project that are not Public Housing Units.
- l) "Non-Public Housing Operating Account" means the bank account to be established in the name of the Owner, into which all rent and other income for the Non-Public Housing Units will be deposited, and out of which all operating expenses for such units (and, to the extent necessary, expenses for the Public Housing Units) will be paid.
- m) "NSP2 Requirements" means all requirements applicable to the NSP2 program as implemented with respect to the Development. Among other requirements, the NSP2 Requirements shall include those requirements made applicable through Title XII of Division A of the American Reinvestment and Recovery Act of 2009 (Public Law 111-005)(the "Recovery Act"), as well as requirements under the "Notice of Funding Availability for the Neighborhood Stabilization Program 2 under the American Recovery and Reinvestment Act, 2009," 74 FR 21377, with corrections issued on June 6, 2009, November 9, 2009 and January 21, 2010 (collectively, the "NOFA"); as well as all requirements made applicable to the Development pursuant to any other federal laws, regulations, notices, guidance and Executive Orders; the NSP2 Requirements shall also include those requirements imposed through the Authority Funds Declaration of Restrictive Covenants recorded as of a substantially even date herewith.
- n) "NSP2 Units" means \_\_\_ of the Public Housing Units, which shall be rented to households that qualify as being eligible to occupy NSP2-funded units in accordance with the NSP2 Requirements, as further provided in the Authority Funds Declaration of Restrictive Covenants.
- o) "Operating Budget" means the annual operating budget for the Project (as a whole and distinguished between the different types of units in the Project), as approved by the Owner and the Authority (to the extent required in the R&O Agreement).
- p) "OHFA" means the Ohio Housing Finance Agency.

- q) “PHAS” shall mean the Public Housing Assessment System as set forth in 24 CFR part 902, or its successor.
- r) “Public Housing Units” means the 33 units in the Project that will be operated and maintained as “public housing” units in accordance with all Applicable Public Housing Requirements.
- s) “Public Housing Operating Account” means the bank account to be established in the name of the Owner, into which all rent and other income (including operating subsidy) for the Public Housing Units will be deposited, and out of which all operating expenses for such units will be paid.
- t) “Regulatory Agreement”, or “R&O Agreement” means the Regulatory and Operating Agreement between the Authority and the Owner, pursuant to which the Authority has agreed to provide certain operating subsidies to Owner for the Public Housing Units, and Owner has agreed to operate 33 units in the Project as “public housing” in accordance with all Applicable Public Housing Requirements.
- u) “Tax Credit Units” means the 65 units in the Project (33 of which are Public Housing Units) that will receive the benefit of the Project’s allocation of LIHTCs.

**ARTICLE 2**  
**APPOINTMENT AND ACCEPTANCE**

2.1 **Appointment and Acceptance.** Owner hereby appoints Manager to manage, operate, maintain and otherwise be responsible for renting the residential units in the Project; and Manager hereby accepts the appointment subject to the terms and conditions set forth in this Agreement.

**ARTICLE 3**  
**TERM**

3.1 **Term.**

- a) This Agreement shall become effective on the date hereof and shall continue in full force and effect for a period of \_\_\_\_\_ (\_\_) years from the date hereof unless terminated in accordance with the provisions of this Article 3. After the initial term and each successive renewal term, this Agreement shall be deemed renewed automatically for a one-year period, on the same terms and conditions as herein stated, unless on or before 60 days prior to the expiration of any such term, either party notifies the other in writing that it elects not to renew the Agreement.
- b) This Agreement may be terminated as follows:
  - (1) By the Owner or the Manager, effective as of the last day of the initial term or, upon sixty (60) days written notice by the terminating party to the other party;
  - (2) If the Authority determines that the Manager has materially violated, breached, or failed to comply with any provision of, or obligation under, the Regulatory Agreement as it pertains to the Public Housing Units (including, without limitation, by reason of its violation, breach or failure to comply with any Applicable Public Housing Requirements and the Nondiscrimination Requirements in the Regulatory Agreement), provided that the

performance of such obligation is under Manager's control and is Manager's responsibility, and subject to notice and a reasonable opportunity to cure, then the Authority may require the Owner to terminate the Manager. Notwithstanding the foregoing, if the Authority determines that the Manager has materially violated, breached or failed to comply with any provision of, or obligation under, the Act or implementing regulations thereof, the Authority may require the Owner to terminate the Manager if the Manager has failed to correct such material violation, breach or failure to comply within ninety (90) days of notice thereof or, if such violation, breach or failure to comply cannot reasonably be cured within such ninety (90)-day period, such longer period as reasonably determined by the Authority. Notwithstanding the foregoing, upon a determination by the Authority of fraud or other criminal activity on the part of the Manager or an employee thereof, the Authority may require the Owner to terminate the Manager immediately.

(3) Immediately upon the occurrence of any of the following events:

- (a) an Event of Bankruptcy with respect to the Manager (as such term is defined in the Owner's Partnership Agreement);
  - (b) the Manager, as a result of gross negligence or willful misconduct, breaches its duties and obligations under this Agreement and the default is not cured within 30 days following written notice thereof;
  - (c) subject to any applicable grace, cure or waiver period (but in any event subject to at least a 30-day cure period), the Manager is cited by HUD, the Authority, the Ohio Housing Finance Agency or any current lender of funds to the Owner for a violation or alleged violation of any applicable rules, regulations, covenant or requirements, or any tax credit related provision;
  - (d) in the event a petition in bankruptcy is filed by or against either the Owner or Manager, or in the event either makes an assignment for the benefit of creditors or takes advantage of any insolvency act, provided that the terminating party gives prompt written notice of such termination.
- c) In the event of any termination of this Agreement, the Manager will cede management of the Project (including, without limitation, the on-site management office, if applicable) to Owner within 48 hours. In addition, within thirty (30) days after such termination, the Manager will (subject to all regulatory restrictions, including but not limited to those set forth in the Regulatory Agreement):
- (1) Turn over to the Owner all of the Project's cash, trust accounts, investments and records;
  - (2) Provide written confirmation to the financial institution(s) holding the Security Deposit Account and each Operating Account that the Manager shall no longer have access to such accounts or the funds therein, and that all such accounts and the funds therein are the sole and exclusive property of Owner. A copy of such confirmation shall be provided contemporaneously to Owner;

- (3) Provide to Owner copies of all leases, contracts, insurance policies, books, files and all other materials and documents in Manager's possession or control relating to the Project to the extent not provided previously;
- (4) Turn over project keys, coded entry devices, passwords, or codes related to the projects or accounts maintained on its behalf;
- (5) Submit to Owner final versions of any and all financial statements required by this Agreement or the Regulatory Agreement;
- (6) Assign to Owner any rights Manager may have (solely in its role as Manager) in and to any existing contracts relating to the operation and maintenance of the Project;
- (7) Settle all unpaid bills for the Project (limited to Owner's funds available to settle said bills); and
- (8) Notify each resident that all future rent payments shall be made directly to Owner.

After Owner and Manager have accounted to each other with respect to all matters outstanding as of the date of termination, the Owner will furnish the Manager security, in form and principal amount satisfactory to the Manager, against any obligations or liabilities the Manager may properly have incurred on behalf of the Owner hereunder.

#### **ARTICLE 4**

#### **GOVERNMENTAL REQUIREMENTS**

4.1 **Public Housing Requirements.** Pursuant to the Regulatory Agreement, the Owner has agreed to provide for the development and operation of the Public Housing Units in a manner consistent with the ACC and all Applicable Public Housing Requirements. In performing its duties under this Management Agreement, the Manager will, with respect to all Public Housing units, comply with all Applicable Public Housing Requirements. In the event that any instruction from the Owner is in contravention of such requirements, the Applicable Public Housing Requirements will prevail. The Manager agrees to use its best efforts to the extent funding allows to maintain and operate the Project in a manner that, to the extent PHAS scores can be identified by project, the Project would achieve a score of at least a High Performer, as defined by 24 CFR §902.67(a).

This Agreement shall not be or be deemed to be an assignment of any funds advanced or contributed by the Authority or HUD to the Owner or the Manager, and the Owner and the Manager shall not succeed to any the Authority rights under the ACC, or attain any privileges, authorities, interests or rights in or under the ACC. Nothing contained in this Agreement, nor any act of the parties hereto, shall be deemed or construed to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any other association or relationship with or involving HUD.

4.2 **Internal Revenue Service:** The Owner has received an allocation of LIHTCs for use in financing the Project. With respect to all Tax Credit Units, of which 33 units also qualify as Public Housing, the Manager will take all steps necessary to assure compliance with the requirements and regulations of both the Internal Revenue Service and OHFA governing the LIHTC program, and comply with the terms of any Tax

Credit Regulatory Agreement applicable to such units. Without limiting the foregoing, Manager will at all times lease, operate, manage and maintain the Project in compliance with all requirements of Section 42 of the Code and the regulations promulgated thereunder, including (without limitation) any and all rent limitations and income qualifications, so that (i) the Project (or each building therein) will at all times qualify as a “qualified low-income housing project” under Section 42(g)(1) of the Code, (ii) each of the buildings will at all times qualify as a “qualified low-income building” under Section 42(c)(2) of the Code, (iii) all Tax Credit Units will at all times qualify as “rent-restricted units” under Section 42(g)(2) of the Code, and will otherwise qualify as “low-income units” under Section 42(i)(3) of the Code, and (iv) all Tax Credit Units will at all times be leased to individuals who qualify to lease or occupy such units under Section 42 of the Code. To the extent Manager is unable to lease, operate, manage and maintain the Project with these requirement, Manager shall promptly notify owner of such fact and the reasons incident thereto.

4.3 **NSP2 Requirements.** The Owner has received an award of NSP2 funds for use in financing the Project. With respect to all NSP2 Units, all of which also qualify as Public Housing and Tax Credit Units, the Manager will take all steps necessary to assure compliance with the NSP2 Requirements.

4.4 **Ohio Law:** The Manager agrees to comply with all applicable laws of the State of Ohio, and all rules and regulations promulgated in connection therewith.

4.5 **Federal Law:** The Manager will comply with all applicable requirements of the following, as the same may be amended from time to time:

- a) The Fair Housing Act, 42 U.S.C. 3601-19, and regulations issued thereunder, 24 CFR Part 100; Executive Order 11063 (Equal Opportunity in Housing) and regulations issued thereunder, 24 CFR Part 107; and the fair housing poster regulations, 24 CFR Part 110.
- b) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and regulations issued thereunder relating to non-discrimination in housing, 24 CFR Part 1.
- c) Age Discrimination Act of 1975, 42 U.S.C. 6101-07, and regulations issued thereunder, 24 CFR Part 146.
- d) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and regulations issued thereunder, 24 CFR Part 8; the Americans with Disabilities Act, 42 U.S.C. 12181-89, and regulations issued thereunder, 28 CFR Part 35.
- e) Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and its implementing regulations at 24 CFR Part 135.
- f) The Drug-Free Workplace Act of 1988 (41 U.S.C. 701) and HUD's implementing regulations at 24 C.F.R. part 24, subpart F.
- g) OMB Circular Numbers A-110 and A-122, as they relate to the acceptance of federal funds and to 24 CFR part 85, to the extent applicable.
- h) Wage Rates under Davis-Bacon Act (40 U.S.C. §276a et seq.) to the extent applicable.

4.6 **Compliance with Government Orders.** Manager will take such action as may be necessary to comply promptly with any and all governmental orders or other requirements affecting the Project, whether

imposed by federal, state, county, or municipal authority, subject, however, to the requirements herein concerning repairs. The Manager shall, however, take no such action so long as the Owner is contesting, or has affirmed its intention to contest, any such order or requirement. The Manager will notify the Owner, in writing, of all notices, of such governmental orders within seventy-two (72) hours of the time of their receipt.

4.7 **Related Documents.** The Owner has adopted a Management Plan incorporated herein by reference, which provides a detailed description of the policies and procedures to be followed in the management of the Project, and an A&O Policy, which describes the criteria and processes for selecting tenants for the Public Housing Units and the requirements for continued occupancy of such units. In many of its provisions, this Agreement briefly defines the nature of the Manager's obligations, with the intention that reference be made to the Management Plan and/or the A&O Policy for more detailed policies and procedures. Accordingly, the Owner and the Manager will comply with all applicable provisions of the Management Plan and the A&O Policy, regardless of whether specific reference is made thereto in any particular provision of this Agreement.

In addition, the Project is subject to certain restrictive covenants and operational requirements as contained in the Regulatory Agreement and other documents listed on Exhibit A attached hereto and incorporated herein (together, the "Project Documents"). The Owner has furnished the Manager with copies of all Project Documents. The Manager agrees to comply, and will cause the Project to comply, with the provisions of the Project Documents.

## **ARTICLE 5** **SERVICES OF MANAGER**

5.1 **Rentals.** Manager shall offer for rent and shall rent the housing units in the Project in accordance with all Requirements (as defined below), a rent schedule to be provided by Owner and the leasing guidelines and form of lease referred to below. Pursuant to its rental responsibilities, Manager shall perform the following (collectively, the Requirements):

- a) follow the tenant selection policies described in the Management Plan and, with respect only to the Public Housing Units (and, to the extent specified therein, the Non-Public Housing Units), the A&O Policy, which policies include renting to low-income tenants at rents that satisfy eligibility for LIHTC purposes;
- b) show housing units for rent in the Project to all prospective tenants;
- c) take and process applications for rentals, as set forth in the Management Plan and, with respect only to the Public Housing Units (and, to the extent specified therein, Non-Public Housing Units), the A&O Policy. If an application is rejected, the applicant will receive written notice of the reason for rejection and the rejected application, with reason for rejection noted thereon, will be kept on file for three (3) years following the rejection. Any applicant so rejected may have the opportunity to file a grievance with the manager in accordance with the Grievance Procedure detailed in the A&O Policy.
- d) comply with the leasing and other Requirements contained in Section 42 of the Code with respect to housing units eligible for the low-income housing tax credit;
- e) prepare all dwelling leases and, if applicable, parking permits, and will execute the same in its name, identified thereon as agent for the Owner. The terms of all leases for Public Housing Units

will comply with all Applicable Public Housing Requirements and any pertinent provisions of the Regulatory Agreement. The terms of all leases for Tax Credit Units will comply with the pertinent provisions of the other Project Documents, and the requirements of the Code regarding LIHTCs. Dwelling leases for the Public Housing Units will be in a form approved by the Owner, the Authority and HUD, but individual dwelling leases need not be submitted for the approval of any of them;

- f) counsel all prospective tenants of Public Housing Units and Tax Credit Units regarding their eligibility for such units, and prepare and verify eligibility certifications and re-certifications in accordance with the R&O Agreement, the A&O Policy, the ACC, the Act and any HUD regulations pursuant thereto, any other Project Documents, and the requirements of Section 42 of the Code (as applicable);
- g) negotiate and execute any concession agreements in Manager's name, identified thereon as agent for Owner, subject to prior written approval by Owner of all terms and conditions;
- h) collect, deposit, and disburse security deposits, if required, in accordance with the terms of each tenant's lease, Sections 9.1 and 9.2 hereof, the provisions of State Landlord-Tenant law, and (with respect to Public Housing Units) all Applicable Public Housing Requirements. The amount of each security deposit will be specified in the lease and be consistent with all applicable laws. Any security deposits collected will be deposited by the Manager in an interest-bearing account, separate from all other accounts and funds, with a bank or other financial institution whose deposits are insured by an agency of the United States. This account will be carried in the Manager's name and designated of record as Collingwood Green Phase I: Security Deposit Account. Interest on security deposits shall be paid according to the leases and applicable law;
- i) maintain a current list of acceptable prospective tenants and undertake all arrangements necessary and incidental to the acceptance of rental applications and the execution of leases, as according to the requirements of 24 CFR Parts 5 and 960. Manager shall exercise its best efforts (including, but not limited to, placement of advertising with all marketing activities complying with federal state and local requirements, including Section 42 of the I.R.C. and the project's R&O Agreement, interviewing prospective tenants, assisting and counseling in completion of rental applications and execution of leases, determining qualification for preference or priority for admission to the Project, processing documents and credit and employment verifications, and explanation of the program and operations of Owner) to effect the leasing of dwelling units and renewal of leases so that the Project is occupied as fully as possible;
- j) perform such other acts and deeds requested by Owner as are reasonable, necessary and proper in the discharge of Manager's rental duties under this Agreement;
- k) prorate the first month's rent collected from tenant should the lease term commence on any other day than the first day of the month. If the lease term occurs after the twentieth (20th) day of the month, the prorated amount, plus the next month's rent, shall be collected on or before the first day of the lease term;
- l) participate in the inspection of each dwelling unit identified in the lease together with the tenant prior to move-in and upon move-out, and shall record in writing any damage to the unit at the time the tenant moved in and any damage occurring during the tenant's occupancy; and

- m) will establish a resident “Grievance Procedure” that complies with Section 6(k) of the Act and 24 CFR Part 966, subpart B. Such Grievance Procedure is detailed in the A&O Policy. With respect to the Public Housing Units, notify the tenant (in a form to be approved by the Owner) of any proposed adverse action (including, but not limited to, lease termination, transfer to a different unit, imposition of maintenance or other charges, or increases in rent) and the grounds therefore. Following such notice, the Manager will afford any tenant who so requests the opportunity for an informal hearing, in accordance with the Owner’s Tenant Grievance Procedure (which applies only to the Public Housing Units and is attached hereto) unless the adverse action is an eviction based on any violent or drug-related criminal activity (on or off the premises), any criminal activity that threatens the health, safety or right to peaceful enjoyment of their premises by other residents of the Project, neighbors or agents of the Owner, or any activity resulting in a felony conviction, in which case the Grievance Procedure will not apply.
- n) Admission of eligible and suitable applicants to occupancy of the Project will be in accordance with, as applicable, a written system of preferences or priorities, as further detailed in the Management Plan and A&O Policy;

**5.2 QUALIFIED RENTAL USE.** In addition to the requirements in Section 5.1 above and in order to comply with the requirements of Section 4.2 above with respect to the Tax Credit Units, Manager shall:

- a) require each prospective tenant to certify, on the lease application and the Low Income Housing Tax Credit Certification form, the amount of such tenant's annual family income, family size, and any other information required to enable Owner to obtain the Credits or otherwise reasonably requested by Owner. Manager shall require tenants to certify in writing as to such matters on an annual basis, prior to such time as the information is required for reporting purposes. Manager must verify information provided by tenant including all income, assets, household characteristics and circumstances that affect eligibility. Income verification is required prior to tenant occupancy of a unit.
- b) from time to time furnish Owner with a written schedule of maximum rents for the dwelling units which complies with the Requirements, for Owner's (and any lender's, if required) approval. Without Owner's express prior written consent, Manager shall not enter into any lease on behalf of Owner at a rental amount exceeding the applicable maximum.
- c) maintain and preserve all written records of tenant family income and size, and any other information necessary to comply with the Requirements or otherwise reasonably requested by Owner throughout the term of this Agreement, and shall turn all such records over to Owner upon the termination or expiration of this Agreement.
- d) If requested by Owner, Manager shall prepare reports of low-income leasing and occupancy and other matters related to Manager's obligations hereunder and to the operation of the Project in form suitable for submission in connection with the LIHTC and in compliance with all Applicable Public Housing Requirements.

**5.3 Collection of Rents and Other Receipts.** The Manager will collect when due all rents, charges and other amounts receivable on the Owner's account in connection with the management and operation of the Project. All such receipts from the Public Housing Units (except for tenants' security deposits, which will be handled as specified in Section 5.1(h) above) will be deposited in an account, separate from all other accounts



and funds, with a bank whose deposits are insured by the Federal Deposit Insurance Corporation (“FDIC”). This account will be carried in the Manager’s name and designated of record as Collingwood Green Phase I: Public Housing Operating Account. Similarly, all receipts from the Non-Public Housing Units (except for tenants’ security deposits) will be deposited in a separate account with a bank whose deposits are insured by the FDIC, which account will be carried in the Manager’s name and designated of record as Collingwood Green Phase I: Non-Public Housing Operating Account. Except for amounts due the Manager pursuant to the provisions hereof, the Manager shall have no property interest in either of the above Operating Accounts. Each Operating Account shall, at all times during the term hereof, be under the control of Owner. Such receipts shall not be commingled with other funds and shall be deposited and held in each Operating Account in accordance with the provisions of Section 9.1 hereof. Manager shall ensure that each resident of a Public Housing and Tax Credit Unit contributes 30% of its adjusted gross income as rent in accordance with 24 CFR part 5 (or as otherwise calculated in accordance with 24 CFR part 5), or flat rents in accordance with 24 CFR part 960.253. In no event shall such rental contributions be modified without the prior written approval of Owner, the Authority, and HUD.

**5.4 Enforcement of Leases.** Manager shall take all reasonable action to secure full compliance by each tenant with the terms of such tenant’s lease. Voluntary compliance will be emphasized and Manager shall counsel tenants and make referrals to community agencies in cases of financial hardship or under other circumstances deemed appropriate by Manager, to the end that involuntary termination of tenancies may be avoided to the maximum extent consistent with sound management of the Project. Nevertheless, and subject to the pertinent procedures prescribed in the Management Plan (and, with respect only to the Public Housing Units, the A&O Policy), Manager may, and shall if requested by Owner, lawfully terminate any tenancy when, in Manager’s judgment, sufficient cause for such termination occurs under the terms of tenant’s lease, including, but not limited to, nonpayment of rent. With respect to any proposed lease termination or eviction of a tenant of a Public Housing Unit, the Manager will provide all notices of lease termination and take all steps described in the Owner’s Tenant Grievance Procedure (which is applicable only to the Public Housing Units). For this purpose, Manager is authorized to consult with legal counsel to be designated by Owner and bring actions for eviction and execute notices to vacate and judicial pleadings incident to such actions, provided, however, that Manager shall keep Owner informed of such actions and shall follow such instructions as Owner may prescribe for the conduct of any such action. Reasonable attorneys’ fees and other necessary costs incurred in connection with such actions, as determined by Owner, shall be paid out of the applicable Operating Account. Manager shall properly assess, bill to and make every reasonable effort to collect from each tenant, or the security deposit, the cost of repairing any damages to the housing unit arising during the tenant’s occupancy.

**5.5 Maintenance and Repairs; Bids and Procurements.**

a) **Maintenance and Repairs.** Manager shall, at Owner’s expense, maintain the Project in a decent, safe and sanitary condition and in a rentable state of repair, all in accordance with the Project rules and regulations and all applicable local, state and federal laws ordinances and codes. Manager shall otherwise maintain the Project at all times in a condition acceptable to Owner, including but not limited to cleaning, painting, decorating, plumbing, carpentry, grounds care, and such other maintenance and repair work as may be necessary. Incident thereto, the following provisions shall apply:

- 1) Special attention shall be given to preventive maintenance and, to that end, the services of assigned maintenance staff shall be used.
- 2) Subject to Owner’s prior written approval, Manager shall contract with qualified independent contractors for the maintenance and repair of major mechanical systems,

and for the performance of extraordinary repairs beyond the capability of regular maintenance personnel. Manager shall obtain, prior to commencement of any work, appropriate written evidence of such contractor's liability and workers' compensation insurance. All service contracts will: (a) be in the name of the Owner; (b) be assignable, at the Owner's sole option; and (c) include a provision for cancellation by the Owner, without payment of any fee, upon not more than 30 days notice.

- 3) Manager shall systematically and promptly receive and investigate all service requests from tenants, take such action thereon as may be justified, and shall keep records of the same. Emergency requests shall be serviced on a 24-hour basis. Complaints of a serious nature shall be reported to Owner after investigation. At Owner's request, Owner shall receive all service requests and the reports of action thereon.
- 4) Manager shall take such action as may be necessary to comply with any and all orders and Requirements of federal, state, county and municipal authorities having jurisdiction over the Project, and with orders of any board of fire underwriters, insurance companies and other similar bodies pertaining to the Project.
- 5) Except as otherwise provided in this section, Manager is authorized to purchase, at Owner's expense, all materials, equipment, tools, appliances, supplies and services necessary for proper maintenance and repair of the Project. Manager shall obtain receipts for all contracts, materials, supplies, utilities, and services for those items which can be obtained from more than one source. Manager shall obtain bids on all contracts or purchases which exceed \$10,000. Manager shall secure and credit to Owner all discounts, rebates or commissions obtainable with respect to purchase, service contracts and all other transactions on Owner's behalf. Provided, however, that to the extent applicable, Manager shall follow its own procurement procedures.

Notwithstanding the foregoing, the prior written approval of Owner will be required for any contract which exceeds one year in duration, or expenditure which exceeds \$10,000 in any one instance for labor, materials, or otherwise in connection with the maintenance and repair of the Project, except for emergency repairs involving manifest danger to persons or property, or required to avoid suspension of any necessary service to the Project. In the event of emergency repairs, Manager shall notify Owner of the facts promptly, and in no event later than 72 hours from the occurrence of the event.

- 6) The Manager will systematically and promptly receive and investigate all service requests from residents, take such action thereof as needed, and will keep and distribute records of the same as follows:
  1. Emergency requests will be received and serviced on a twenty-four (24) hour basis. All emergency repairs will be repaired or abated within 24 hours.
  2. Routine repairs will be completed with reasonable promptness. All routine repairs will be evaluated within seven working days, and every effort will be made to complete routine repairs within 21 days, excluding extenuating circumstances.

3. The Manager will track work orders by, at a minimum, the date and time the work order was received, the nature of the repair, and the completion date.

5.6 **Utilities and Services.** Manager shall make arrangements for water, electricity, gas, fuel, oil, sewage and trash disposal, vermin extermination, decoration of common areas, laundry facilities, telephone services and other necessary services in connection with the Project. Subject to Owner's prior approval as required in Section 5.5, Manager shall make such contracts as may be necessary to secure such utilities and services.

5.7. **On-site Management; Personnel.**

- a) **On-Site Management Facilities.** Subject to the further agreement of the Owner and the Manager as to more specific terms, the Manager will maintain a management office within the Project. The cost associated with this item will be treated as a Project expense, a proportionate share of which will be attributable to the Public Housing Units and the Non-Public Housing Units, respectively.
- b) **Personnel.** The Management Plan will prescribe the number and positions of the personnel to be regularly employed in the direct management of the Property. All such personnel will be employees of the Manager and will be hired, paid, supervised, and discharged by the Manager. All employees of the Manager must meet all qualifications, licensing and code requirements applicable to assigned tasks and responsibilities. Within the described staffing program, the Property Manager will have authority and responsibility for organizing and directing the work of all on-site employees. All direct costs associated with "on-site" employees, including Property Manager, rental and leasing staff, maintenance, landscaping, custodial staff and security personnel, as applicable, will be paid by the Owner from Property funds as a property operating expense, including direct salary and fringe benefits, taxes and assessments payable to federal state and local governments in connection with employment of such personnel. Costs attributable to other employees of the Manager who perform "front-line" functions (as defined and illustrated in HUD Handbook 4381.5 REV-2, The Management Agent Handbook, Chapter 6) will also be paid from Property funds as a property operating expense. All planned employees who will be paid from Property funds will be identified in the budget detail. All maintenance laborers and mechanics employed in the operation of the Property shall be paid not less than the wages prevailing in the locality, as determined or adopted by the Secretary of HUD pursuant to Section 12 of the Act, subject to the provisions of subsection (b) thereof.

5.8 **Operating Accounts.**

- a) From the funds collected and deposited by the Manager into each Operating Account pursuant to Section 5.3 above, the Manager will make the following disbursements from each such Operating Account (in a proportionate amount applicable to the Public Housing Units and the Non-Public Housing Units, unless otherwise specified in the R&O Agreement or the Project Documents) promptly when payable:
  - (1) Reimbursement to the Manager for the pro rata share of compensation (including fringe benefits) payable to the employees specified in Section 5.7 above, and for the taxes and assessments payable to local, state, and Federal governments for such personnel, worker's compensation insurance, and any other payroll expenses in connection with the

employment of such personnel. Manager shall be allowed to charge the Project a fee equal to five percent of payroll to cover the cost of processing the payroll.

- (2) The aggregate payments required to be made monthly by the Owner to the Mortgagees, including the amounts due under the Mortgages for principal, amortization, interest, taxes and assessments, fire and other hazards insurance premiums, and the amount specified in the Mortgages or R&O Agreement or other documents for allocation to any reserves.
- (3) All sums otherwise due and payable by the Owner as expenses of the Project and authorized to be incurred by the Manager under the terms of this Agreement, including the costs of all maintenance, repairs and services (pursuant to Sections 5.6 and 5.7 above) and compensation payable to the Manager for its service hereunder (pursuant to Section 11.1 below).
- (4) Rent refunds, payments to tenants of Public Housing Units as utility allowances (as described in the A&O Policy), and payments on behalf of such residents directly to utility providers (to the extent specifically provided by any agreements between the Owner and such providers) with notification and proof of payment to the tenant.

The Manager specifically acknowledges and agrees that disbursements from the Public Housing Operating Account may be made only for "Public Housing Unit Expenses," as defined in the R&O Agreement. Manager further acknowledges and agrees that, as further defined in the R&O Agreement, the definition of "Public Housing Unit Expenses", (i) is subject to adjustment in the amount of the portion, if any, of a line item that is inappropriate to allocate between the Public Housing Units and all other units within the Project on the basis of the "Authority Percentage" (e.g., marketing and advertising costs, if such costs relate solely or preponderantly to the Non-Public Housing Units), and (ii) is presently understood to exclude principal and amortization payments to Mortgagees.

- b) Except for the disbursements mentioned in Section 5.8.a. above, funds will be disbursed or transferred from either Operating Account only as the Owner may from time to time direct in writing. The Manager will invest any Project funds that HUD policies require to be invested, and make reasonable efforts to invest other Project funds in Permitted Investments, as defined in the R&O Agreement, unless the Owner specifically directs the Manager not to invest those other funds.
- c) The Owner shall establish and maintain one or more reserve accounts with reasonable reserve funds to provide for working capital needs of the Project for operations, maintenance, repairs, capital improvements, replacement, contingencies or any other purpose deemed necessary or appropriate by the Owner (each a "Replacement Reserve"). In the event the balance in either Operating Account is at any time insufficient to pay disbursements due and payable under Subsection 5.8.a above, the Manager will inform the Owner of that fact and the Owner will make a withdrawal from the Replacement Reserve for the Operating Reserve (as defined in the Regulatory Agreement) and remit such funds to the Manager in an amount sufficient to cover the deficiency; if the deficiency in either Operating Account is of a temporary nature (i.e., based only on the fact that disbursements are payable before tenant rents and other Project income has been collected), the Manager shall, following deposit into the appropriate Operating Account of tenant rents and other Project income for the applicable month, reimburse the Owner in the amount of any such withdrawals, and Owner shall, in turn,

reimburse the Operating Reserve account. In no event will the Manager be required to use its own funds to pay any Project disbursements or be liable for any losses, costs or damages arising out of owner's failure to cover the deficiency. Notwithstanding anything herein to the contrary, all withdrawals from any reserve account shall be made in accordance with the R&O Agreement.

5.9 **Operating Budget.** Manager shall prepare a recommended annual operating budget and projected rental rates for the Project for each fiscal year during the term of this Agreement, and shall submit the same to Owner, Investor and (to the extent required under the Regulatory Agreement) the Authority at least one hundred twenty (120) days before the beginning of such fiscal year. The annual operating budget shall include a schedule of recommended rents to be charged for each housing unit, including recommended rent increases with respect to lease renewals and new leases. In preparing each proposed annual operating budget, Manager shall use its best efforts to take account of anticipated increases in real estate taxes, utility charges and other operating costs. To the extent feasible, Manager shall support anticipated increases in real estate taxes and utility charges with written evidence or documentation. Proposed annual operating budgets for the Project shall be subject to approval by Owner, Investor and the Authority (to the extent required under the Regulatory Agreement). Owner shall inform Manager of any changes incorporated in the approved operating budget, and Manager shall make no expenditures in excess of the amounts set forth in such approved operating budget for each line item of operation expense itemized, without the prior written approval of Owner, except as permitted pursuant to Section 5.5 thereof for emergency repairs involving manifest danger to persons or property, or required to avoid suspension of any necessary services to the Project.

5.10 **Escrow & Tax Payments.** From the funds collected and deposited by Manager in the Operating Account, Manager shall make any monthly escrow payments required under the mortgage loans or the direction of Owner, if any, for the purpose of funding insurance, tax and such other reserve or escrow accounts for the Project as are necessary to conform to the Requirements. Manager promptly shall present tax bills and insurance premium notices to the escrow agent for payment, and shall furnish Owner with evidence of timely payment of such taxes and insurance premiums, and of timely payment of mortgage and escrow payments, if any.

5.11 **Licenses and Permits.** Manager shall acquire and keep in force, at Owner's expense, all licenses and permits required for the operation of the Project as rental housing.

5.12 **Records and Reports.** In addition to any Requirements (as defined in Section 5.1) specified in this Agreement, Manager shall have the following responsibilities with respect to records and reports:

- a) Manager shall establish and maintain a system of records, books, and accounts using the accrual method of accounting and in a manner satisfactory to Owner and Investor and the Authority which is consistent with and for the duration mandated by the Requirements. All records, books and accounts shall include information relating to the status of the Project (including complete tenant files, both current and historic, and a maintenance file for each dwelling in the Project). All records, books and accounts will be subject to examination at reasonable hours upon reasonable notice by any authorized representative of either the Owner or any of its members or of the Authority.
- b) Manager shall prepare and submit the following reports to Owner on or by the twentieth (20th) day after the end of each calendar month.
  - 1) A monthly asset management report in the form provided by Investor.

- 2) A current month rent roll showing delinquencies, vacancies, rent collections, physical occupancy and qualified tax-credit occupancy.
  - 3) A statement of any accounts, records, reports, documents and other information necessary to receive payments under the Regulatory Agreement and the ACC (all such payments received by the Manager to be deposited in the Public Housing Operating Account).
  - 4) Reconciled bank statements of the Operating Accounts, Security Deposit Accounts and Replacement Reserve Accounts as of the end of the previous month.
  - 5) A narrative of any unusual actions taken or emergencies responded to, and a full report of any accidents, claims, and potential claims, for the proceeding month.
- c) Manager shall prepare and submit the following quarterly reports in the form required by Owner to Owner on or by the twentieth (20th) day after the end of each calendar quarter.
- 1) A quarterly asset management report in the form provided by Owner.
  - 2) A quarterly status report in the form provided by Owner.
  - 3) A balance sheet for the Project.
  - 4) An income statement with actual vs. budget comparison.
  - 5) A check register for the quarter.
  - 6) Copies of cancelled check and any statement for real estate taxes paid during the quarter.
  - 7) Copies of cancelled check and any invoice for insurance premiums paid during the quarter.
  - 8) Upon request of Owner, copies of cancelled check and invoice for any payment of \$1,000 or more (excluding mortgage and utility payments, cash transfers, management fees or reimbursements to management company).
  - 9) Reconciled bank statements for all company accounts.
  - 10) Such other reports as are reasonably requested for such quarter, including, if requested, a trial balance and a general ledger.
- d) Each quarterly report shall include separate reports on the operations of the public housing components of the Project and the non-public housing component of the Project as well as a report on the entire Project. At the end of the third quarter, an estimate of benefits and losses for the year, the projected operating budget for the coming year and the use of MBE and WBE's in the operation of the project shall be included.
- e) No later than sixty (60) days after the end of each fiscal year of the Project, the Manager will prepare and submit to the Owner (for the Owner's signature and submission to the Authority and HUD) a draft of the federal tax information and a complete annual financial report for the Project based upon an examination of the books and records of the Owner including (i) a report containing audited financial statements for the prior fiscal year, including a profit and loss statement, a balance sheet, a statement of member's equity, and a cash flow statement; (ii) an unaudited comparison of the actual results of the operations of the Project during prior fiscal year with operating budget for each year; (iii) a report of the occupancy level of the project; (iv) a statement indicating if there are any operating deficits or anticipated operating deficits; and if so, the manner in which it is anticipated that such deficits will be funded; (v) a narrative explaining significant deviations in the operations of the Project from projected operations and outlining and explaining any material or significant occurrences affecting the Project or the owner; and (vi) any other information regarding the Project and its operations during the prior fiscal year reasonably requested by the Owner.

Each annual report shall include separate reports on the operations of the public housing

component of the Project and the non-public component of the Project, as well as a report on the entire Project. After approval by the Owner, the final completed reports shall be prepared and certified by the Owner's certified public accountant in accordance with the requirements of the Owner, any directives of the Lenders or the Authority and in conformity with generally accepted accounting principles applied on a consistent basis.

- f) Manager shall send all reports that are required to be sent to any lenders to Owner for Owner's prior approval, which approval shall not be unreasonably withheld or delayed provided, however, that Owner shall have two weeks to review such reports prior to submission to any lender.
- g) Manager shall prepare, execute and file all forms, reports and returns required by law in connection with the employment of personnel, unemployment insurance, workers' compensation insurance, disability benefits, Social Security and other similar insurance, and all other benefits or taxes now in effect or hereafter imposed.
- h) All bookkeeping, data processing services and management overhead expenses shall be paid for by Manager, including any additional accounting services necessary to produce reports required under this Section 5.12 to the satisfaction of Owner.
- i) Manager shall promptly furnish such additional information as may be requested from time to time by Owner with respect to the renting and financial, physical or operational condition of the Project, and agrees to assist the Owner, as reasonably necessary, in providing all other information and preparing all other reports as the Owner is required to provide under the Regulatory Agreement.
- j) Manager shall establish tenant files containing copies of leases, certification forms, notices and other documentation required by Owner as necessary to conform to the Requirements. In addition, Manager shall upon request by Owner provide to Owner a copy of all original tenant files as soon as they become available.
- k) Manager will permit the Authority, HUD and any agency providing funds to Authority, to perform any audit of the Manager's finances and records related to its performance under this Agreement, including without limitation, the financial arrangement with any party Manager may delegate to discharge any part of its obligations under this Agreement. Manager shall provide access to Authority, HUD, any agency providing funds to Authority, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and records which are directly pertinent to this Agreement for the purpose of audit and examination, including the right to make copies. The Manager shall provide HUD or its duly authorized representative access to the Property.

5.13 **Supporting Documentation.** As additional support to the monthly asset management report and rent roll required pursuant to Section 5.12 b) above, Manager shall provide, upon Owner's request, copies of the following:

- a) Bank deposit slips.
- b) Detailed trial balance.
- c) Summaries of adjusting journal entries.

5.14 **Tenant-Management Relations.** Manager shall encourage and assist tenants of the Project to

participate in a residents' organization to promote the tenants' common interests and to increase their ability and incentive to protect and maintain the Project and to contribute to its efficient management.

5.15 **Owner Communications**. Manager shall be available for communications with Owner and shall keep Owner advised of items materially affecting the Project.

5.16. **[Reserved]**

5.17 **[Reserved]**

## **ARTICLE 6 MANAGEMENT AUTHORITY**

6.1 **Authority**. Manager's authority is expressly limited to the provisions contained herein as they may be amended in writing from time to time in accordance with the provisions of this Agreement. Owner expressly withholds from Manager any power or authority to make any structural change in the Project or to make any other major alterations or additions in or to the Project or fixtures or equipment therein, or to incur any expense chargeable to Owner other than expenses related to exercising the express powers granted to Manager by the terms of this Agreement without the prior written consent of Owner.

6.2 **Delegation of Duties**. Manager shall have the right to engage independent contractors for performance of such of its duties hereunder as Manager deems necessary, but Manager shall have the responsibility for supervision of the performance of such duties. All contracts with independent contractors shall be subject to the approval of Owner.

6.3 **Compliance with Law**. Manager shall comply fully with all federal, state, county, municipal and special district laws, ordinances, rules, regulations and orders relative to the leasing, use, operation, repair and maintenance of the Project. Manager shall remedy promptly any violation of any such law, ordinance, rule, regulation or order which comes to its attention and shall notify Owner by the end of the next business day after Manager becomes aware of any violation for which Owner may be subject to penalty.

6.4 **Management Plan**. Particular Requirements for the day-to-day management of the Project are outlined in the Management Plan.

## **ARTICLE 7 INSURANCE AND INDEMNIFICATION**

7.1 **Liability of Manager**. Except as expressly provided to the contrary herein, the obligations and duties of Manager under this Agreement shall be performed as agent of Owner. All expenses incurred by Manager in accordance with its obligations and duties under this Agreement and consistent with Owner's approved operating budget, except those due to gross negligence or willful misconduct and those expressly specified as Manager's expenses herein, shall be for the account of and on behalf of Owner.

7.2 **Insurance**. Manager shall obtain and keep in force such forms and amount of insurance requested by Owner at the Owner's expense as necessary under the Requirements (and as otherwise shall be in conformity with the R&O Agreement) with insurance companies satisfactory to Owner, including but not limited to insurance against physical damage (e.g., fire and extended coverage endorsement, boiler and machinery, etc.) and against liability for loss, damage or injury to property or persons which might arise out of the occupancy, management, operation or maintenance of any part of the Project. Manager, while acting as real estate manager for Owner, shall be named as an additional insured in all liability insurance maintained with



respect to the Project. Manager shall investigate and promptly furnish to Owner and the Authority full written reports of all accidents, claims and potential claims for damages relating to the Project, and shall cooperate fully with Owner's insurers, regardless of whether the insurance was arranged by Manager or others. Manager shall provide a copy of such insurance policies to Owner and, to the extent required under the loan documents, to the lenders.

7.3 **Fidelity Bond.** The Manager will furnish, at its own expense, a fidelity bond in a principal sum that is at least equal to the gross potential income of the Project for two months and is conditioned to protect the Owner and AMHA against misappropriation of Project funds by the Manager and its employees. The other terms and conditions of the bond, and the surety thereon, will be subject to the approval of the Owner.

7.4 **Cooperation.** Manager shall furnish whatever readily available information is requested by Owner for the purpose of obtaining insurance coverage, and shall aid and cooperate in every reasonable way with respect to such insurance and any loss thereunder.

7.5 **Manager's Insurance.** At all times during the term of this Agreement, Manager shall maintain insurance in full force and effect, with a responsible insurance company reasonably satisfactory to Owner and to Owner's lenders, and shall furnish Owner with a certificate of insurance evidencing workers' compensation insurance, in such amounts as may be required by law from time to time. Such certificate shall have attached thereto endorsements that Owner shall be given at least thirty days' prior written notice of cancellation of, or any material change in, policy. Owner shall not reimburse Manager for Manager's cost of such insurance.

7.6 **Subcontractor's Insurance.** Manager shall require that all subcontractors working on the Project maintain, at the subcontractor's expense, workers' compensation insurance, in such amounts as may be required by law from time to time. Manager shall be notified promptly in the event Owner waives any of the Requirements in this Section 5.5.

7.7 **Indemnification of Owner.** Manager shall at all times keep its employees and contractors insured for statutory workers' compensation and other employee benefits required by all applicable laws; and Manager shall maintain employer's liability insurance for an amount not less than \$1,000,000 covering claims and suits by or on behalf of employees and others not otherwise covered by statutory workers' compensation insurance. Owner and its members shall be protected in all such insurance by specific inclusion of Owner under an additional insured or alternate employer rider. Manager shall provide Owner with certificates of insurance evidencing that workers' compensation and employer's liability insurance are in force, and providing not less than thirty (30) days' notice to Owner prior to cancellation. Manager will cooperate with Owner and, upon reasonable request, will attend hearings and trials and assist in effecting settlements, securing and giving evidence, and obtaining the attendance of witnesses in the conduct of suits. Manager will not voluntarily settle any suit, make any payment, assume any obligation, or incur any expense regarding said action without the express written consent of Owner.

7.8 **Indemnification of Manager.** To the extent permitted by law, Owner agrees to defend, indemnify and save harmless Manager from all claims and suits in connection with the Project, provided that such claims and suits are attributable to bodily injury, sickness, disease or death; or to injury to, or destruction of, tangible property; and such claims and suits arise, or are alleged to arise, in whole or in part, out of any negligent act or omission of Owner, its officers, employees or agents. Owner agrees to include Manager as an additional insured in Owner's public liability policy with respect to the Project, but only while Manager is acting as real estate manager for Owner under this Agreement. Owner shall provide Manager and Investor with a certificate of insurance evidencing such liability insurance, and providing not less than ten (10) days' notice to Manager and Investor prior to cancellation.

7.9 **Survival of Indemnity Obligations.** The indemnity obligations contained in this Agreement shall survive the termination of this Agreement.

7.10 **Limitation of Liability.** Manager agrees that it will not seek recourse against the individual partners, shareholders, directors, officers, employees or agents of Owner or any personal assets for satisfaction of any liability with respect to this Agreement.

7.11 **Increased Risk.** Manager shall give Owner written notice if any facts of which Manager is aware as to a material increase in the risk of casualty loss or a claim of liability in connection with the Project or its operation. Such notice shall be given within five business days of when Manager has knowledge of such facts. The obligation shall be limited to issues on the Project and shall not include occurrences within the surrounding neighborhood.

## **ARTICLE 8** **OWNER'S RIGHT TO AUDIT**

8.1 **Owner's Right to Audit.** Owner and the Authority reserve the right to conduct, or to appoint others to conduct, examinations, at Owner's expense, without notification, of the books and records maintained for Owner by Manager, and to perform any and all additional audit tests relating to Manager's activities hereunder.

8.2 **Correction of Discrepancies.** Should Owner's or the Authority's employees or appointees discover either weaknesses in internal control or errors in record keeping, Manager shall correct such discrepancies either upon discovery or within a reasonable period of time. Manager shall inform Owner in writing of the action taken to correct such audit discrepancies. Owner shall have the right, within ten (10) days written notice to Manager, to audit all files and accounts pertaining to the Building at Manager's principal office during normal business hours. If such audit reveals a material discrepancy (defined as a discrepancy of more than 2% of each budgeted income and expense line item, as reflected in the annual budget approved by Owner), Manager shall be responsible for promptly correcting such discrepancy within ten (10) days after receipt of notice of same.

## **ARTICLE 9** **REMITTANCE OF FUNDS**

9.1 **Deposit of Funds.** Manager shall deposit immediately upon receipt all security deposits in a separate account designated as such by the Manager for Owner (the "Security Deposit Account"); and in accordance with Section 5.3 herein, shall deposit all rents and other funds collected from the operation of the Project, including any and all advance funds, in a bank approved by Owner, in Owner's accounts for the Project, in the name of the Owner ("Operating Accounts").

9.2 **Security Deposits.** Manager shall maintain detailed records of all security deposits and such records shall be open for inspection by Owner's employees or appointees. Manager shall return a tenant's security deposit to such tenant only in accordance with the lease.

## **ARTICLE 10** **NONDISCRIMINATION**

10.1 **Nondiscrimination.** In the performance of its obligations under this Agreement, the Manager will comply with, and will use reasonable efforts to ensure that all subcontractors comply with, the provisions of

any Federal, state or local law prohibiting discrimination on the grounds of race, color, sex, sexual orientation, creed, handicap/disability, age or national origin, including: Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241) and all requirements imposed by or pursuant to the Regulations of HUD (24 CFR, Subtitle A, Part 1,) issued pursuant to that Title; regulations issued pursuant to Executive Order 11063; the Fair Housing Act, Title VIII of the 1968 Civil Rights Act, Section 504 of the Rehabilitation Act of 1973 (as amended), the Age Discrimination Act of 1975 and all regulations and administrative instructions implementing these laws.

## **ARTICLE 11** **COMPENSATION**

11.1 **Compensation.** The Manager will be compensated for its services under this Agreement by monthly fees, to be paid out of the appropriate Operating Account and treated as Project expenses. Such fees will be payable on the first day of each month of this Agreement. The management fee for the Tax Credit Units (i.e. all units) shall be paid by the Owner to the Manager in an amount of up to \_\_\_\_\_ (i.e., assuming that all such units are LIHTC units with tenants paying the maximum rent allowable under the tax credit program of 30% of 60% of AMGI for the applicable unit size) per occupied unit (such fee to be prorated for any unit which is occupied for a partial month). In no event will the management fee per unit exceed the maximum management fee allowed under the HUD Safe Harbors.

Any increase in the fees set forth above will require the prior written consent (to the extent required under applicable law, the Regulatory Agreement or any Mortgage) of the Authority, and any current lender of funds to the Owner.

## **ARTICLE 12** **COOPERATION**

12.1 **Cooperation.** If any claims, demands, suits or other legal proceedings which arise out of any of the matters relating to this Agreement be made or instituted by any person against either Owner or Manager, Owner or Manager shall give to each other all pertinent information and reasonable assistance in the defense or other disposition thereof, at its sole expense.

## **ARTICLE 13** **CONSENT**

13.1 **Consent.** Whenever in this Agreement the consent or approval of Owner or Manager is required, such consent or approval shall not be unreasonably withheld or delayed. Such consent shall be in writing, and shall be duly executed by an authorized officer or agent for the party granting such consent or approval; however, notwithstanding anything in this Agreement to the contrary, if such consent or approval would be required for Manager to comply with the Requirements, Manager shall not be responsible for a failure to comply with the Requirements as a result of Owner's refusal or unreasonable delay to so consent or approve.

**ARTICLE 14**  
**NOTICES**

14.1 **Notices.** All notices, demands, consents and reports provided for in this Agreement shall be given in writing and shall be deemed received by the addressee on the third day after mailing if mailed by United States Postal Service certified or registered mail, postage prepaid, or on the day delivered if personally delivered at the following addresses:

If to Owner: Collingwood Green Phase I, L.P.  
435 Nebraska Avenue  
Toledo, OH 43697  
Attn: Executive Director

with copy to: Lucas Metropolitan Housing Authority  
435 Nebraska Avenue  
Toledo, OH 43697  
Attn: Executive Director

If to Manager: [To be provided]

The above addressees may be changed by the appropriate party giving written notice of such change to the other parties.

**ARTICLE 15**  
**MISCELLANEOUS**

15.1 **Assignment.** Manager shall not assign its rights under this Agreement without the prior written consent of Owner; and any purported assignment without Owner's prior written consent shall be of no effect.

15.2 **Special Power of Attorney.** Owner authorizes Manager, as attorney-in-fact for Owner, to enter into and execute leases and rental agreements with respect to the Project on forms approved by Owner; to collect rents and other funds due Owner in Manager's name on Owner's behalf; and to establish and make deposits into and withdrawals from the Security Deposit Account and the Operating Accounts in accordance with the terms of this Agreement.

15.3 **Amendments.** This Agreement constitutes the entire agreement between Owner and Manager; and no amendment, alteration, modification or addition to this Agreement shall be valid or enforceable, unless expressed in writing and signed by the party or parties to be bound thereby.

15.4 **Headings.** All headings herein are inserted only for convenience and ease of reference, and are not to be considered in the construction or interpretation of any provisions of this Agreement.

15.5 **Waiver.** The waiver of any of the terms and conditions of this Agreement on any occasion or occasions shall not be deemed as waiver of such terms and conditions on any future occasion.

15.6 **Illegality.** If any provision of this Agreement shall prove to be illegal, invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.

15.7 **Relationship**. Nothing contained in this Agreement shall be construed to create a relationship of employer and employee between Owner and Manager; it being the intent of the parties hereto that the relationship created hereby is that of an independent contractor. Nothing contained herein shall be deemed to constitute Owner and Manager as partners or joint venturers.

15.8 **Binding Effect**. This Agreement shall be binding upon and inure to the benefit of Owner, its successors and permitted assigns; and shall be binding upon and inure to the benefit of Manager, its successors and permitted assigns.

15.9 **Governing Law**. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio.

15.10 **Enforceability**. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof. Owner's remedies under this Agreement are cumulative, and the exercise of one remedy shall not be deemed an election of remedies, nor foreclose the exercise of Owner's other remedies. No waiver by Owner of any breach of this Agreement shall be deemed to be a waiver of any other or subsequent breach.

15.11 **Execution of Counterparts**. For the convenience of the parties, this Agreement may be executed in multiple counterparts, each of which shall constitute a complete original of this Agreement, and may be introduced in evidence or used for any other purpose without the production of any other counterparts.

15.12 **Successors and Assigns**. This Agreement shall inure to the benefit of, and constitute a binding obligation upon, Owner and Manager and their respective successors and assigns; provided, however, that Manager shall not assign this Agreement, or any of its duties hereunder, without the prior written consent of Owner. In the event Owner's current managing member, or any successor managing member of Owner, is removed as managing member in accordance with the Operating Agreement, any successor managing member selected in accordance with such Operating Agreement shall have authority to act hereunder on behalf of Owner.

15.13 **Conflict**. In the event of any conflict between this agreement and all Applicable Public Housing Requirements, then all Applicable Public Housing Requirements will prevail.

15.14 **Confidentiality**. All information and data to which the Manager may have access under this Agreement and information and data that are received by the Manager from the Owner shall be treated in confidence. Such information and data shall be used only for purposes in performing the work.

In witness whereof, the parties hereto have caused their duly authorized representatives to execute this Agreement as of the date first set forth below.

**[signature page follows]**

**MANAGER:**

[NAME, an Ohio corporation]

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

Name:

Title:

**OWNER:**

COLLINGWOOD GREEN PHASE I, L.P., an Ohio  
limited partnership

By: Collingwood Development I, Inc., an Ohio  
corporation, its General Partner

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

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

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

**APPENDIX B**

**COST CONTROLS AND SAFE HARBOR STANDARDS**

## **Cost Control and Safe Harbor Standards for Rental Mixed-Finance Development**

**Revised: April 9, 2003**

In order to expedite the mixed-finance review process and control costs, HUD is instituting safe harbor and maximum fee ranges for a number of costs. In addition, HUD has provided guidance on several development issues. Unless otherwise noted, the cost controls and safe harbors apply to those phases for which a mixed-finance proposal is submitted after January 1, 2000. Any terms previously approved by HUD through approval of a pre-development agreement, development agreement, or program manager contract will not be reviewed again. This guidance is specific to rental developments, and does not apply to homeownership phases.

These policies were developed in consultation with housing authorities, HUD staff, and industry representatives, over the course of more than a year. Once drafted, they were circulated for public review, and the final cost controls included here reflect the many valuable comments received. HUD will continue to review the policies, based on experiences reported by housing authorities and other program participants, and may make alterations to the standards in the future.

Changes from the revised Cost Control and Safe Harbor Standards (January 2, 2002) are italicized in this alert and include the following:

- HOPE VI or other public housing funds may be used, on a case-by-case basis, to pay for up to 15% of the total developer fee/overhead amount to the developer prior to closing. A loan is not required.
- Operating subsidy and tenant rents used to fund a reserve must be used for eligible operating subsidy expenses.
- The property management fee for the public housing units may be calculated as 6% of imputed tax credit rents.

HUD's cost controls and safe harbors are contained in the following chart. The chart provides a brief definition of each term, lists the safe harbor and maximum allowable fees, and briefly describes the risk factors or circumstances that may result in a fee above the safe harbor standards. These guidelines should be used by housing authorities, developers, and consultants when negotiating terms and drafting documents for HUD review.

HUD will review the project terms when receiving Predevelopment and Development Agreements, Program Manager contracts, mixed-finance proposals, and/or other documents that contain negotiated terms. If a project is at or below a safe harbor standard, no further review will be required by HUD. If a project is above a safe harbor standard, additional review by HUD will be necessary. In order to approve terms above the safe harbor, the housing authority must demonstrate to HUD in writing that the negotiated terms are appropriate for the level of risk involved in the project, the scope of work, any specific circumstances of the development, and the local or national market for the services provided.



## Cost Control and Safe Harbor Standards

Item	Defining Criteria	Safe Harbor	Maximum
<p>Net Developer Fee for Rental Mixed-Finance Developments</p> <p>(Developer Fee and Overhead)</p>	<p>The safe harbor and maximum standards apply to the net developer fee, i.e., the portion of the developer fee received by the developer to cover overhead and profit.*</p> <p>Net developer fee is expressed as a percentage of the project costs. Project costs are defined as all hard and soft costs of constructing a particular component with the <b>exclusion</b> of the following:</p> <ul style="list-style-type: none"> <li>• Third-party costs paid by the PHA under contracts entered into directly by PHA and third parties, which will not be reimbursed to PHA at a mixed-finance closing (e.g., where the PHA contracts separately for demolition services);</li> <li>• The developer fee itself;</li> <li>• All costs related to family self-sufficiency and resident relocation activities; and,</li> <li>• All reserve accounts regardless of how characterized, including start-up reserves, operating deficit reserves, capital improvement reserves, initial operating period reserve, etc.</li> </ul> <p>Payments to developers such as “deferred developer fee” are considered part of the fee/overhead amount.</p> <p>Developers may receive up to a 1% additional fee (with a cap of 12% developer fee) if cost savings are realized. This 1% incentive fee must be paid from non-public housing funds.</p>	<p>9% or less of the project costs (profit and overhead); projects that do not have both LIHTC and public housing financing should have fees well below 9%.</p>	<p>12% of the project costs (profit and overhead).</p> <p>Fees above 12% will be considered only if allowed by the State Housing Finance Agency <b>and</b> with significant justification from the PHA and developer demonstrating the increased risk.</p>

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\* The safe harbor and maximum guidelines assume the net developer fee excludes any portion of the fee received by the developer or co-developer (including a PHA) that is returned to the project to fund operating reserves or to cover project costs.

## Cost Control and Safe Harbor Standards

Item	Defining Criteria	Safe Harbor	Maximum
	<p>Developers with fees above the safe harbor standard should meet most or all of the following risk factors:</p> <ul style="list-style-type: none"> <li>• Developer guarantees are for large dollar amounts in proportion to project size and/or long terms;</li> <li>• Developer independently obtains financing, including tax credits (fee increases with both amount of financing and number of sources);</li> <li>• Developer obtains site control from an entity other than a PHA or PHA affiliate (fee increases with number of sites);</li> <li>• Project is small (i.e., 50 units or less);</li> <li>• Project is complex (e.g., in financial, legal, environmental, and/or political terms);</li> <li>• Project contains units without operating subsidy (i.e., market-rate or LIHTC-only units);</li> <li>• Developer bears more than 25% of the predevelopment costs (until reimbursement at closing); and/or</li> <li>• The Developer Fee is deferred (paid out of positive cash flow from market-rate units).</li> </ul> <p>All criteria apply to both for-profit and non-profit developers.</p> <p>PHAs or PHA affiliates that act as developer can only receive fees if they are first returned to the project and, to the extent that funds are remaining, subsequently classified as program income and used for low-income housing purposes.</p>		

## Cost Control and Safe Harbor Standards

Item	Defining Criteria	Safe Harbor	Maximum
<p>Pay-Out Schedule for Developer Fee/Overhead</p>	<p>Public housing funds may not be used for payment of developer fee/overhead. HUD recommends the following limit on the pay-out schedule, to the extent that non-public housing funds are available, by phase:</p> <ul style="list-style-type: none"> <li>• Closing: Not to exceed 50% of the fee/overhead amount.</li> <li>• Construction Completion: 25% of the fee/overhead amount.</li> <li>• Stabilized Occupancy: 25% of the fee/overhead amount.</li> </ul> <p>A portion of the fee can be further deferred.</p> <p><i>On a case-by-case basis, HUD will consider advancing the developer funds where there is an extended predevelopment period caused by such external factors as environmental remediation, consent orders, etc. If HUD determines such an advance is warranted, HUD will advance up to 15% of the total developer fee/overhead amount to the developer prior to closing using HOPE VI or other public housing funds.</i></p>	<p>Within recommended pay-out schedule.</p>	<p>Payments of greater than 50% at closing or less than 25% at stabilized occupancy will be closely scrutinized.</p>
<p>Contractor Fee</p>	<ul style="list-style-type: none"> <li>• Percentages are based on hard construction cost.</li> <li>• General Conditions includes the bond premium.</li> </ul>	<p>Overhead: 2% Profit: 6% General Conditions: 6%</p>	<p>14% is the maximum for these combined costs provided that the PHA justifies why the 2/6/6 percentages for the individual costs cannot be met.</p>

## Cost Control and Safe Harbor Standards

Item	Defining Criteria	Safe Harbor	Maximum
PHA Administrative/ Consultant Costs	<ul style="list-style-type: none"> <li>• Costs should reflect only actual documented expenditure of time and overhead cost (supplies, equipment, telephone, etc.)</li> <li>• Such costs include both in-house staff time and outside consultants (program manager, development advisors, relocation specialists, etc.), but <b>exclude</b> outside legal and community and supportive services costs. On the HUD budgets, these costs may be captured under multiple BLIs.</li> <li>• This cap applies to HOPE VI grantees awarded funds in 1998 or later, as well as to any non-HOPE VI mixed-finance projects with proposals submitted after January 1, 2000; HUD will evaluate earlier grants on a case-by-case basis. HUD will continue to evaluate whether this cap provides helpful guidance and controls costs without hampering the PHA's ability to implement the grant.</li> </ul>	3% of the total project budget (basis includes all hard and soft development costs <b>excluding</b> CSS expenses).	6% of the total project budget
Sharing of Third-party Pre-development Costs	<p>HUD recommends the following cost-sharing schedule:</p> <ul style="list-style-type: none"> <li>• PHA and Developer split third-party costs 75/25.</li> <li>• Developer's share of third-party costs (25%) will be reimbursed at closing out of available sources.</li> </ul> <p>Costs to be shared are all third-party costs under the developer's scope of work (e.g., A/E, market study, financing fees, etc.) incurred during the predevelopment period. Public housing funds may not be used to reimburse developer legal counsel prior to closing, and developer legal costs do not contribute to the developer's share of third-party costs.</p> <p>Exceptions to the schedule may be made for small, local, non-profit, and/or minority/disadvantaged firms on a case-by-case basis.</p>	Costs are shared up to 75% by the PHA and at least 25% by the Developer.	N/A
Equity Raise and Pay-In Schedule	HUD will not adopt a safe harbor equity raise or standard pay-in schedule, as these are highly competitive, market-driven numbers.	Current market standard.	N/A

## Cost Control and Safe Harbor Standards

Item	Defining Criteria	Safe Harbor	Maximum
Identity of Interest Parties	<ul style="list-style-type: none"> <li>• Identity of interest parties are those that share an ownership interest. Identity of interest relationships are most common between a developer/owner and construction management, general contractor (GC), private management firm, and/or investor.</li> <li>• PHAs are required to ensure cost competitiveness to the extent possible.</li> <li>• Where a developer and GC have an identity of interest, the PHA needs to show the GC was the lowest bidder in response to a public request for bids or request a waiver from HUD under 24 C.F.R. 941.606(n)(1)(ii)(B).</li> <li>• While the use of related or preferred entities as investors is permitted, HUD encourages PHAs to have their procured developer “shop around” to ensure they are getting a competitive yield.</li> </ul>	N/A	N/A

## Cost Control and Safe Harbor Standards

Item	Defining Criteria	Safe Harbor	Maximum
Property Management Fees	<ul style="list-style-type: none"> <li>• Can be defined on a percentage of gross income or per-unit per month (PUM) basis.</li> <li>• If using the PUM basis for fee, fees should drop for vacant units.</li> <li>• PHAs and PHA Affiliates cannot earn a fee for property management of public housing units, but can cover their associated administrative expenses.</li> <li>• Fees may increase with higher-risk projects.</li> <li>• Different types of risk are associated both with mixed-income and solely public housing projects.</li> </ul>	<p>a) 6% effective gross income or,</p> <p>b) a flat PUM fee for occupied units that is supported by the local project-based Section 8 program in the area (use Field Office guidelines) or,</p> <p><i>c) 6% of imputed tax credit rent for the public housing units (assume public housing units are tax credit units, charge up to maximum tax credit rent, and take 6% of that amount).</i></p>	Proposals above the safe harbor will be closely scrutinized; higher fees will require significant justification and market support.
Price for Program Management Services	<ul style="list-style-type: none"> <li>• Typically a fixed-price contract.</li> <li>• Contracts must be performance-based with payments fixed to milestones (or monthly if tied to milestones).</li> <li>• Size of fee should be related to the specific scope and role PM is expected to play.</li> <li>• Costs for program management (either a full team or independently procured consultants) must be included in the PHA's Administrative Cost Cap.</li> <li>• PHAs must comply with the provision of the procurement regulations that requires a PHA to prepare a cost estimate for procured services prior to receipt of bids.</li> </ul>	N/A; the fee must be contained within the PHA's overall Administrative Cost Cap. Use checklist of responsibilities and clearly defined scope to limit costs.	N/A

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Legal Fees	<ul style="list-style-type: none"> <li>• Largely independent of the size of the phase.</li> <li>• Attorneys should be used for legal functions.</li> <li>• Legal fees should be tied to a scope of work, which should be monitored. HUD will review PHA legal costs when reviewing HOPE VI development budgets.</li> <li>• In order to reduce costs and provide an incentive to reach closing, public housing funds may not be used to pay developer legal costs prior to closing.</li> <li>• HUD intends to produce further guidance on how PHAs should utilize their attorneys.</li> <li>• The procurement regulations state that for any RFP, the PHA must undertake a cost or price analysis prior to receipt of proposals.</li> </ul>	No express limit; public housing funds may not be used to reimburse developer legal counsel prior to closing. All legal costs will be reviewed by HUD.	N/A
Operating Deficit Reserve and Operating Subsidy Reserve	<ul style="list-style-type: none"> <li>• HUD is not establishing maximum or minimum levels of reserves to be maintained, as appropriate reserve levels depend upon the specific project and investor requirements.</li> <li>• Both reserves must be established with non-public housing funds, but may be replenished with public housing funds (i.e., operating subsidy or tenant rents from PHA-assisted units).</li> <li>• <i>If public housing funds are contributed to a reserve at any time, those funds in the reserve must be dedicated to the project or returned to the PHA to be used for eligible purposes.</i></li> <li>• <i>The portion of the reserve funded with public housing funds may not be used to pay for partnership exit taxes, debt repayment, or any other expense that is not an eligible use of public housing funds.</i></li> </ul>	N/A	N/A