

**CONTRACT BETWEEN AFFORDABLE HOUSING ACQUISITION AN AFFILIATE  
OF THE HOUSING AUTHORITY OF THE CITY OF EL PASO AND**

**XXXXXXXXXXXXXXXX.**

**INTRODUCTION**

This Contract (the “Contract”) by and between **Affordable Housing Acquisition an Affiliate of The Housing Authority of the City of El Paso**, a profit state governmental entity (hereinafter “AHA”) and **XXXXXXXXXXXX**, (hereinafter “the Contractor”) is hereby entered into this XX day of XXXX, 2018 (the “Effective Date”).

**1.0 Definitions**

- 1.1 Procurement Administration (“AHA PROCUREMENT MANAGER”).** AHA Procurement Manager.
- 1.2 Request for Proposals (“RFP”).** A competitive solicitation process conducted by AHA wherein an award is generally made to the top-rated responsive and responsible bidder.
- 1.3 Days.** All references to “days” shall be calendar days; in the case that the last day referenced falls on a Saturday, Sunday or legal holiday, then the period of time shall be automatically extended to include the next work day.
- 1.4 Project.** All references to the “Project” shall mean the **XXXXXXXXXXXXXXXX**.
- 1.5 Appendices.** The following documents are included in the Contract as individually noted exhibits and shall be incorporated herein and made a part of this Contract by reference as if fully set forth herein:
- 1.6** The following, each of which was either issued by AHA as a part of the competitive solicitation and/or which was completed and returned by the Contractor in response to the solicitation (copies are not included under any of the appendices but are included herein by reference and are included within the solicitation file):
  - 1.6.1** Current Insurance Certificate/Endorsement (naming AHA or affiliate as “additional insured”);
  - 1.6.2** Supplementary Instructions to Offerors;
  - 1.6.3** Non-Collusive Affidavit – Prime Offeror
  - 1.6.4** Texas Statutory Performance Bond
  - 1.6.5** Payment Bond;

RFP OPS 18 XXXXXXXX  
XXXXXXXXXXXXXXXX

**1.6.6 Subcontractor Identification**

**1.6.7 Contractor’s and Subcontractor’s Non-Conclusive Affidavits;**

**1.6.8 Scope of Work included as part of RFP Package OPS XXXXXXXX;**

**1.7 Term of Contract.** Services pursuant to this Contract (the “Services”) shall begin upon Contractor’s receipt of the written Notice to Proceed by AHA. Notwithstanding the continuation of any warranties contained herein, this Contract shall terminate upon Final Completion.

**1.8 Services and Payment**

**1.9 Scope of Services.** The Contractor shall furnish all labor, material, equipment and services, and perform and complete all work required for the XXXXXXXXXXXXXXXX, El Paso, TX 799XX in accordance with this Agreement and RFP No. **OPS 18-RXXXX** prepared by AHA and any duly executed Addenda to this Agreement. Said labor, materials, equipment and services shall be provided on the dates and times determined by AHA at the above-stated AHA communities and/or facilities. In addition, AHA shall retain the right to implement and/or enforce any item issued as a part of RFP No. OPS 18-R-XXXX.

**1.7 Cost/Value of Services**

**1.7.1 Labor Costs.** The Contractor shall not pay wages that are less than the highest wage required by either of the following:

**1.7.1.1** The wage determination rates listed in RFP No. **OPS 18-R-XXXX**

**1.7.2 Contract Value.**

**1.7.3** AHA shall pay the Contractor for the performance of the Contract, in current funds, subject to additions and deductions as provided in the Technical Specifications, not-to-exceed (“NTE”) the sum of:

**\$XXXXXXXXXX**

Contractor exceeds the above-stated NTE amount at its own risk.

**1.7.4 Time for Performance.** The Contractor hereby agrees to commence work under this Contract upon receipt of a written Notice to Proceed (“NTP”), submitted by AHA. The Contractor shall complete the project within XXXXXXXXXX (XXX) calendar days.

**1.7.4.1 Commencement of Work.** Contractor shall not commence work under this contract until all necessary permits and

approvals, including modification thereof, that are preconditions to commencement of construction of the Project have been issued.

**1.7.4.2 Delays/Time Extensions.** Time extensions for performance may be granted by AHA Procurement Manager and AHA Chief Executive Officer. Any time extension shall be granted by written modification to this Contract.

**1.7.4.3 Final Completion.** The Contractor shall notify AHA Procurement Manager, in writing, as to the date when in its opinion the work is substantially complete and ready for inspection. Upon receipt of such notification, AHA shall conduct an inspection of the work within ten (10) days. AHA shall promptly advise the Contractor, in writing, of any remaining final punch list items following such inspection. The Contractor shall notify AHA in writing when all punch list items have been completed and all clean-up has been done. AHA will then conduct a final inspection within ten (10) days of receipt of such notification. Performance shall be considered complete upon the Contractor's receipt from AHA of written acceptance of the work and AHA's receipt from the Contractor of the following:

**1.7.4.3.1.1** the total amount due the Contractor and a separately stated amount for each unsettled claim against AHA;

**1.7.4.3.1.2** documentation noting that AHA is released of all claims, other than those stated in the Contractor's release;

**1.7.4.3.1.3** wages paid to laborers were paid as required herein; and

**1.7.4.3.1.4** all guaranties and warranties contained herein are assigned to AHA.

**1.7.5 Liquidated Damages.** Pursuant to Page 3, section #4 of RFP, the Contractor agrees to pay to AHA, the sum of **\$0.0** per day/building as fixed, agreed, liquidated damages for each consecutive calendar day beyond the time for performance provided in this Contract is not terminated until Final Completion is achieved.

- 1.7.6 **Non-Escalation.** Unless otherwise specified within the RFP documents, the unit prices reflected in this Contract shall remain firm with no provision for price increases during the term of the Contract.

**1.8 Billing Procedure**

- 1.8 To receive payment for Services rendered pursuant to this Contract, the Contractor shall:

- 1.8.1 Submit all certified payroll reports up to the date of the work being billed.
- 1.8.2 Progress payments must be approved by AHA Procurement Manager and AHA Chief Executive Office.
- 1.8.3 Progress payment requests shall be delivered to the attention of:

Affordable Housing Acquisition an Affiliate of  
The Housing Authority of the City of El Paso  
Attn: Accounts Payable  
5300 E. Paisano Drive  
El Paso, TX 79905-2931

- 1.8.4 The AHA will pay each properly completed invoice received on a Net/30 basis. Any invoice received that is not properly completed will not be paid unless and/or until the Contractor complies with the applicable provisions of this contract.
- 1.8.5 Final payment will be made by AHA upon receipt of the Contractor's all required payroll reports have been received and any wage discrepancies have been resolved by the Contractor.

- 2.0 **Term of Contract.** Services pursuant to this Contract (the "Services") shall begin upon Contractor's receipt of the written Notice to Proceed by AHA. Notwithstanding the continuation of any warranties contained herein, this Contract shall terminate upon Final Completion.

- 3.0 **Contractor's Obligations.** Pursuant to this Contract, the Contractor agrees to provide the specific construction obligations detailed in the Scope of Work issued by AHA included in RFP No. OPS 18-R-XXXX and herein.

- 3.1 The Contractor agrees not to accept or perform any assigned work initiated by a contract amendment or change order without the prior written approval of AHA Procurement Manager and AHA Chief Executive Officer.

- 3.1.1 **Change Order Requests:** The Contractor acknowledges, by signature below, that change order requests will not be summarily approved. All

change order requests must be submitted to AHA for approval, prior to undertaking the additional work.

- 3.1.2 Minimum Rates of Pay.** The Contractor shall pay not less than the wages required under the wage determination rates included in RFP No. **OPS 18-R-XXXX** and any amendments thereto.
- 3.2 Supervision and Oversight.** The Contractor shall be solely responsible for providing supervision and oversight to all of the Contractor's personnel and any subcontractors that are assigned to AHA work pursuant to this Contract.
- 3.3 Qualified Personnel.** The Contractor warrants and represents that it will assign only qualified personnel to perform the Services. For the purposes of this Contract, the term "qualified personnel" shall mean those personnel that are experienced and/or trained in the manner generally accepted within the Contractor's Industry.
- 3.4 Compliance with Federal and State Laws.** All work performed by the Contractor, pursuant to this Contract, shall be done in accordance with all applicable federal, state and local laws, regulations, codes and ordinances.
- 3.5 Licensing.** The Contractor shall provide AHA with copies of any required current City, State and/or Federal licenses. Failure to maintain these licenses in a current status during the term(s) of this Contract shall constitute a material breach thereof.
- 3.6 Permits.** Unless otherwise stated in the Contract documents, all local, state or federal permits, environmental permits, and licenses which may be required to provide the Services ensuing from award of this Contract, whether or not known to either AHA or the Contractor at the time of the Contract execution, shall be the sole responsibility of the Contractor including any and all costs therefore.
- 3.7 Government Standards.** It is the responsibility of the Contractor to ensure that all items and services proposed conform to all local, state and federal law concerning safety (e.g., OSHA and NIOSH) and environmental control (e.g., EPA and City of El Paso Health and Safety Code, and any other enacted ordinance, code, law or regulation. The Contractor shall be responsible for all costs incurred for compliance with any such possible ordinance, code, law or regulation. No time extensions shall be granted or financial consideration given to the Contractor for time or monies lost due to violations of any such ordinance, code, law or regulations that may occur.
- 3.8 Work on AHA Property.** If the Contractor's work under the Contract involves operations by the Contractor on AHA premises, the Contractor

shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work.

- 3.9 Subcontractors.** Unless otherwise stated within the RFP bid documents, the Contractor may not use any subcontractors to accomplish any portion of the Services required by this Contract without the prior written permission of AHA Procurement Manager.
- 3.10 Salaries and Expenses Relating to the Contractor's Employees.** Unless otherwise stated within the RFP documents, the Contractor shall pay all salaries and expenses of, and all federal Social Security taxes, federal and state unemployment taxes, and any similar taxes relating to its employees used in the performance of the Contract. The Contractor further agrees to comply with all federal, state and local wage and hour laws and all licensing laws applicable to its employees or other personnel furnished under this Contract.
- 3.11 Communication.** If during the period of the Contract, it is necessary that AHA place toll or long distance telephone calls or facsimiles in connection with the Contractor's performance of the Contract (for complaints, adjustments, shortages, failure to deliver, etc.), it is understood that the Contractor may, at the discretion of AHA, bear the charge or expense for all such calls and/or facsimiles.
- 3.12 Access to Records.** Both parties hereby agree that the Contractor will make available to AHA, the Comptroller General of the United States, or any of their duly authorized representatives (including retained auditors), any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts and transcriptions.
- 3.13 Record Retention.** The Contractor shall retain all such records pertaining to this Contract for a period of not less than three (3) years after final payment or the completion of any Services provided pursuant to this Contract, whichever occurs later.
- 3.14 Backorders**
- 3.14.1** The Contractor must notify AHA Procurement Manager within ten (10) days of the following:
- 3.14.1.1** Any and all backordered materials;
  - 3.14.1.2** Any delay in the Contractor's performance; and
  - 3.14.1.3** The estimated date for delivery or performance.

**3.15 Inspections.** The Contractor shall permit AHA to conduct periodic inspections of the work. Any deficiencies noted by AHA during inspections shall be disclosed to the Contractor in writing within Five (5) days of discovery, and the Contractor shall remedy such deficiency within Five (5) calendar days of notification of such from AHA or as otherwise agreed to in writing by both parties.

**4.0 Insurance Requirements**

**4.1** The Contractor shall maintain insurance coverage during the effective term(s) of this Contract No. **OPS 18-C-XXXX**.

**4.2** The Contractor shall provide AHA with current certificate(s)/endorsement(s) evidencing the insurance coverage referenced above. Failure to maintain the above-referenced insurance coverage, including naming AHA as an additional insured (where appropriate) during the term(s) of this Contract shall constitute a material breach thereof.

**4.3** Insurance certificate(s)/endorsement(s) shall be delivered to:

**Juan Pulido**  
**Procurement Manager**  
**c/o Affordable Housing Acquisition an Affiliate of**  
**The Housing Authority of the City of El Paso**  
**5300 E. Paisano Drive**  
**El Paso, TX 79905-2931**

**5.0 Indemnification**

**5.1** The Contractor shall protect, indemnify and hold AHA or subsidiaries, its officers, employees, and agents harmless from and defend against any and all claims, damages, losses, suits, actions, decrees, judgments, attorney's fees, court costs and other expenses of any kind or character which AHA, its officers, employees, agents, consulting engineers or other retained consultants may suffer, or which may be sought against, recovered from or obtainable against AHA, its officers, employees, and agents, based upon the Contractor's actions or failure to act during the performance of the Contractor's duties hereunder, or as a result of any work performed by the Contractor, regardless of when such claims shall arise. The Contractor's duty to indemnify AHA shall apply regardless of whether or not the event which gave rise to such a claim was caused, in part, by AHA.

- 5.2** Any money due by the Contractor under and by virtue of this Contract which is considered necessary by AHA for such purpose, may be retained by AHA for its protection; or in case no money is due, its surety may be held until all such claims, damages, losses, suits, actions, decrees, judgments, attorney's fees and court costs and other expenses of any kind or character as aforesaid shall have been settled and suitable evidence to that effect furnished to AHA provided, however, that money due the Contractor will not be withheld when the Contractor produces satisfactory evidence that it is adequately protected by applicable public liability and property damage insurance;
- 5.3** The Contractor shall, at its own expense, defend AHA, its officers, employees, and agents, against any and all claims, suits or actions which may be brought against them, or any of them, as a result of, or by reason of, or arising out of, or on account of, or in consequence of any act or failure to act the consequences of which the Contractor has indemnified AHA, its officers, employees, and agents against. If the Contractor fails to do so, AHA shall have the right, but not the obligation, to defend the same and to charge all direct and incidental costs of such defense to the Contractor including attorney's fees and court costs.
- 5.4** The Contractor guarantees the payment of all claims for materials, supplies and labor, and all other claims against it or any subcontractor, in connection with the Contract.
- 5.5** The Contractor shall provide that any authorized contractual arrangement with a subcontractor shall be in conformance with the terms of this Contract including the indemnity provisions of this Section 8.

## **6.0 Financial Viability and Regulatory Compliance**

- 6.1** The Contractor warrants and represents that its corporate entity is in good standing with all applicable federal, state and local licensing authorities and that it possesses all requisite licenses to perform the Services required by this Contract. The Contractor further warrants and represents that it owes no outstanding federal, state or local taxes or business assessments.
- 6.2** Contractor agrees to promptly disclose to AHA any IRS liens or insurance or licensure suspension or revocation that may adversely affect its capacity to perform the Services required by this Contract. The failure by the Contractor to disclose such issue to AHA in writing within five (5) days of Contractor's receipt of such notification will constitute a material breach of this Contract.
- 6.3** Pursuant to Section 231.006, Texas Family Code, Contractor warrants and represents that it is not ineligible to receive the award of or payments under



this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

- 6.4** Pursuant to Section 2155.004, Texas Government Code, Contractor warrants and represents that the individual or business entity named in this Agreement is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 6.5** A corporate or limited liability company Contractor warrants and represents that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code.
- 6.6** The Contractor further agrees to promptly disclose to AHA any change of its ownership and/or any declaration of bankruptcy that the Contractor may undergo during the term(s) of this Contract. The failure of the Contractor to disclose any change of its ownership and/or its declaration of bankruptcy within five (5) days of said actions shall constitute a material breach of this Contract.

## **7.0 Disputes**

**8.0 Breach.** Pursuant to 2 CFR 200.339 as issued by the Office of the Secretary, AHA and the Contractor each agree to comply with the following provisions:

- 8.1 Termination For Cause and Convenience.** AHA may terminate this Contract for cause. AHA may also terminate this Contract for convenience. Any termination notice shall state the following:
- 8.1.1** whether the Contract is being terminated for convenience or cause;
- 8.1.2** whether the Contract is terminated in whole or in part;
- 8.1.3** if terminated for cause, the acts or omissions constituting the material breach, AHA Procurement Manager's determination that failure to perform is not excusable, AHA's right to charge excess costs of re-procurement to the Contractor, and the Contractor's appeal rights;
- 8.1.4** effective date of termination;
- 8.1.5** if applicable, the Contractor's right to proceed under the non-terminated portion of the Contract; and
- 8.1.6** any special instructions.
- 8.2** Prior to termination, AHA may choose, at its sole discretion, to warn the Contractor, verbally or in writing, of any issue of non-compliance or

unsatisfactory performance. Such warning may include placing the Contractor on probation, thereby giving the Contractor a certain period of time to correct the deficiencies or potentially suffer termination. AHA shall maintain in the Contract file a written record of any such warning detailing all pertinent information. If the Contractor does not agree with such action, the Contractor shall have ten (10) days from receipt of such verbal or written warning to dispute or protest such action in writing; if it does not do so within the 10-day period, it shall have no recourse but to accept AHA's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including any justification detailing AHA's alleged incorrect action(s).

- 8.3 After termination, if the Contractor does not agree with AHA's justification for the termination, the Contractor shall have ten (10) days from the date of termination to dispute such action in writing.
- 8.4 Any protest or dispute submitted by the Contractor under this Section shall thereafter be conducted in accordance with Section 9.1 herein.
- 8.5 All rights and remedies granted to AHA herein and any other rights and remedies which AHA may have at law and in equity are hereby declared to be cumulative and not exclusive. The fact that AHA may have exercised any remedy without terminating this Contract shall not impair AHA's rights thereafter to terminate or to exercise any other remedy herein granted, or to which AHA may be otherwise entitled.

**9.0 Applicable Federal Law. ONLY PROJECTS USING FEDERAL FUNDS APPLIES.** Pursuant to 2 CFR 200 as issued by the Office of the Secretary, AHA and the Contractor each agree to comply with the following provisions:

- 9.1 **Executive Order 11246.** For all construction contracts awarded in excess of \$10,000, both parties hereby agree to comply with "Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor Regulations (41 CFR Chapter 60).
- 9.2 **Copeland "Anti-Kickback" Act.** For all construction or repair contracts awarded, both parties hereby agree to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR 10.27).
- 9.3 **Davis-Bacon Act. ONLY PROJECTS USING FEDERAL FUNDS APPLIES.** For all construction contracts awarded in excess of \$2,000 when required by Federal Grant Program legislation, both parties hereby agree to

comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented in Department of Labor Regulations (29 CFR Part 5).

- 9.4 Sections 103 and 107 of the Contract Work Hours and Safety Standards Act.** For all construction contracts awarded in excess of \$2,000 and for other contracts, which involve the employment of mechanics or laborers awarded in excess of \$2,500, both parties hereby agree to comply with the Sections 103 and 107 of the Contract Work Hours and Safety Act (40 U.S.C. 327-330) as supplemented in Department of Labor Regulations (29 CFR Part 5).
- 9.5 Clean Air Act.** For all contracts in excess of \$100,000, both parties hereby agree to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR 49.3).
- 9.6 Energy Policy and Conservation Act.** Both parties hereby agree to comply with all mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
- 9.7 Additional Federally Required Orders/Directives. ONLY PROJECTS USING FEDERAL FUND APPLIES.** Both parties agree that they will comply with the following laws and directives, where applicable:
- 9.7.1 Executive Order 11061, ONLY PROJECTS USING FEDERAL FUNDS APPLIES,** as amended, which directs the Secretary of HUD to take all action which is necessary and appropriate to prevent discrimination by agencies that utilize federal funds.
- 9.7.2 Public Law 88-352, Title VI of the Civil Rights Act of 1964,** which provides that no person in the United States shall, on the basis of race, color, national origin or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives federal financial assistance. AHA hereby extends this requirement to the Contractor and its private contractors. Specific prohibited discriminatory actions and corrective action are described in Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 19901 et. seq.).
- 9.7.3 Public Law 90-284, Title VIII of the Civil Rights Act of 1968,** popularly known as the Fair Housing Act, which provides for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing or the provision of brokerage services, including in any way making unavailable or denying a dwelling to

any person because of race, color, religion, sex or national origin. Pursuant to this statute, AHA requires that the Contractor administer all programs and activities, which are related to housing and community development in such a manner as to affirmatively further fair housing.

- 9.7.4 The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age.
- 9.7.5 Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.).
- 9.7.6 HUD Information Bulletin 909-23 which is the following: **ONLY PROJECTS USING FEDERAL FUNDS APPLIES.**
- 9.7.6.1 Notice of Assistance Regarding Patent and Copyright Infringement;
- 9.7.6.2 Clean Air and Water Certification; and
- 9.7.6.3 Energy Policy and Conservation Act.
- 9.7.7 That the funds that are provided by AHA and HUD hereunder shall not be used, directly or indirectly, to employ, award a Contract to, or otherwise engage the services of any debarred, suspended or ineligible Contractor.
- 9.7.8 That none of the personnel who are employed in the administration of the work required by this Contract shall, in any way or to any extent, be engaged in the conduct of political activities in violation of Title V, Chapter IS, of the United States Code.
- 9.7.9 That neither party has colluded, conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham bid or to refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid price of affiant or of any other bidder, to fix overhead, profit or cost element of said bid price, or that of any other bidder, or to secure any advantage against either party or any person interested in the proposed Contract; and that all statements in said proposal or bid are true.
- 9.8 **Rights in Data and Patent Rights (Ownership and Proprietary Interest).** AHA 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.

**10.0 Lobbying Certification. ONLY PROJECTS USING FEDERAL FUNDS APPLIES**

By execution of this Contract with AHA the Contractor thereby certifies, to the best of his or her knowledge and belief, that:

- 10.1** No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal loan, the entering into of any cooperative agreement, or modification of any federal contract, grant, loan, or cooperative agreement.
- 10.2** If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form – LLL, Disclosure Form to Report Lobbying, in an accordance with its instructions.
- 10.3** The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

**11.0 Miscellaneous Provisions**

**11.1 Notices, Invoices and Reports.** Except as otherwise provided in this Contract, all notices, reports, records or other communications that are required or permitted to be given to the parties under this Contract shall be sufficient in all respects if given in writing and delivered in person, by email, facsimile, by overnight courier or by registered or certified mail, postage prepaid, return receipt requested, to the receiving party at the following address:

<b>If to AHA:</b>	Gerald Cichon, Chief Executive Officer AHA 5300 East Paisano Drive El Paso, TX 79905-2931 Facsimile: 915-849-3868
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<b>If to Contractor:</b>	<b>XXXXXX</b>
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RFP OPS 18 XXXXXXXX  
XXXXXXXXXXXXXXXX

**El Paso, TX 799XX**  
**Phone number: XXX-XXX-XXXX**

or such other address as such party may have given to the other parties by notice pursuant to this Section. Notice shall be deemed given on (i) the date such notice is personally delivered, (ii) three (3) days after the mailing if sent by certified or registered mail, (iii) one (1) business day after the date of delivery to the overnight courier if sent by overnight courier, or (iv) the next succeeding business day after transmission by facsimile, provided that any fax delivery is followed up with another method of notice listed in this Section within one (1) business day of sending the facsimile.

- 11.2 Taxes.** All persons doing business with AHA are hereby made aware that AHA is non-exempt from paying Texas State Sales and Use Taxes and Federal Excise Taxes.
- 11.3 Officials, Agents and Employees of AHA Not Personally Liable.** It is agreed by and between the parties hereto that in no event shall any official, officer, employee, or agent of AHA in any way be personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this Contract.
- 11.4 Assignment.** The Contractor shall not assign or transfer any interest in this Contract.
- 11.5 Entire Agreement; Amendment.** This Contract (including all Appendices attached hereto or other documents included by reference herein) constitutes the entire contract between the parties hereto and may not be modified except by an instrument in writing signed by the party to be charged. This Contract may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each party hereto.
- 11.6 Governing Law; Venue.** The laws of the State of Texas shall govern the validity, construction and effect of this Contract, unless such laws are superseded by, or in conflict with applicable federal laws and/or federal regulations. Each party irrevocably submits to the exclusive jurisdiction of any federal or state court located in El Paso County, Texas in any action, suit or proceeding arising out of or relating to this Contract, and agrees that any such action, suit or proceeding shall be brought only in such court.
- 11.7 Attorney's Fees.** In the event that litigation is commenced by one party hereto against the other in connection with the enforcement of any provision of this Contract, the prevailing party shall be paid by the losing party all

court costs and other expenses of such litigation, including reasonable attorneys' fees. The amount so allowed as attorneys' fees shall be taxed to the losing party as costs of the suit, unless prohibited by law.

- 11.8 Severability.** If any provision of this Contract or any portion or provision hereof applicable to any particular situation or circumstance is held invalid, the remainder of this Contract or the remainder of such provision (as the case may be), and the application thereof to other situations or circumstances shall not be affected thereby.
- 11.9 Waiver of Breach.** A waiver of either party of any terms or conditions of this Contract in any instance shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this Contract shall be cumulative and none of them shall limit any other remedy, right, obligation or agreement of either party.
- 11.10 Time of the Essence.** Time is of the essence for performance of this Contract.
- 11.11 Payment and Performance Bonds.** If the Contract Value as provided in Section 1.6.4 and 1.6.5, exceeds \$100,000, the Contractor shall furnish bonds covering faithful performance of the Contract and payment obligations arising thereunder. Bonds may be obtained through the Contractor's usual source and the cost thereof shall be included in the Contract Value. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Value. In addition:
- 11.11.1**The bond must be approved and reviewed by AHA Procurement Manager;
- 11.11.2**The bond must name AHA as obligee;
- 11.11.3**The Contractor shall deliver the required bonds to AHA before the commencement of any work pursuant to this Contract.
- 11.12 Limitation of Liability.** In no event shall AHA be liable to the Contractor for any indirect, incidental, consequential or exemplary damages.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

**12.0 Certifications.** The undersigned representatives of each party acknowledge by signature below that they have reviewed the foregoing and understand their respective obligations as defined herein. This Contract may be signed in counterparts.

**AFFORDABLE HOUSING ACQUISITION AN AFFILIATE OF  
THE HOUSING AUTHORITY OF THE CITY OF EL PASO**

**By** \_\_\_\_\_ **Date** \_\_\_\_\_  
:  
GERALD CICHON  
CHIEF EXECUTIVE OFFICER

XXXXXXXXXXXXXXXX

**By** \_\_\_\_\_ **Date** \_\_\_\_\_  
:  
AUTHORIZED SIGNER  
TITLE

**AFFORDABLE HOUSING ACQUISITION AN AFFILIATE OF  
THE HOUSING AUTHORITY OF THE CITY OF EL PASO  
APPROVED AS TO FORM ONLY:**

**By** \_\_\_\_\_ **Date** \_\_\_\_\_  
:  
AHA LEGAL COUNSEL