

Introduction

This contract between the Minneapolis Public Housing Authority (MPHA) in and for the City of Minneapolis, a body corporate and politic, duly created, organized and existing under the laws of the State of Minnesota, and _____ (Contractor) is entered into this ___ **day of September, 2023.**

Services pursuant to this contract shall begin once the MPHA issues the Contractor a Notice to Proceed. The term “herein” as used throughout this contract refers to this contract form, the appendices, and all listed attachments.

Contract Intent

The purpose of this agreement is to state and define the terms and conditions under which the Contractor shall provide full comprehensive maintenance and repair services for vertical transportation systems identified, and the terms and conditions under which the MPHA shall compensate the Contractor for such services rendered.

It is the intent of this contract to ensure all requirements, procedures, tests, inspections, service practices, component repairs, equipment renewals, system adjustments, filing procedures and recording documentation as referenced, mandated or otherwise implied herein are all inclusive, and to guarantee the MPHA the absence of a particular item of work, service or procedure shall not alleviate the Contractor of the sole responsibility to provide such labor, expertise, materials, equipment, services or other procedures applicable to the agreement and practical requirements unless same is specifically excluded, prorated or deleted herein.

Minimum standards and requirements for services to be rendered shall be performed in accordance with the specifications and relative time periods. Where there is no specific requirement for a preventive maintenance procedure, the original equipment manufacturer (O.E.M.) standard shall be employed unless there is no relative documentation available. The absence of both a contract requirement herein and the O.E.M. design standard shall cause the Contractor to engage the services of a qualified engineer to formulate the relative standards and incorporate same as an addendum to this agreement with the Professionals' Seal and Stamp.

Definitions of Terms

- A. The term “MPHA”, as used herein, refers to Minneapolis Public Housing Authority.
- B. The term “Owner/Agent”, “Owner’s Agency”, “Owner’s Designee” or “Project Manager” or references of similar import, as used herein, refers to Steve Peterson, 1001 Washington Avenue North, Minneapolis, MN 55401.
- C. The term “Consultant”, as used herein, refers to VDA (Van Deusen & Associates, Inc.), 5775 Wayzata Blvd., Suite 700, St. Louis Park, MN 55416.
- D. The term “Contract” or “Contract Documents”, as used herein, consists of the Agreement, Bidding Information, Conditions of Contract, Specifications and includes any Alternates or Addenda issued during the bidding period.
- E. The term “Elevator Contractor”, “Contractor” or “Vendor”, as used herein, refers to _____.
- F. The term “Subcontractor”, as used herein, refers to any persons, partners, firm, or corporation having materials and/or labor for the execution of the work herein described.

Abbreviations and Symbols

Abbreviations for associations, institutions, societies, reference documents and/or governing agencies, which may appear in the contract document, shall mean the following:

AIA	American Institute of Architects
ANSI	American National Standards Institute
ASME	American Society of Mechanical Engineers
BOCA	Building Officials and Code Administrators International, Inc. (Basic National Building Code)
A.H.J.	Authority Having Jurisdiction
G.A.	Governing Agency
NEC	National Electrical Code
OSHA	Occupational Safety and Health Administration

1.0 Agreement Coverage-Interim and Guarantee Periods

- 1.1 The entire vertical transportation system(s) shall be maintained as hereinafter described, in accordance with the following detailed terms. Trained employees of the Contractor will use all reasonable care to keep the systems in proper adjustment and in safe operating condition, in accordance with all applicable codes, ordinances, and regulations. The requirements are specified in the singular with the understanding that all provisions shall be applicable to all units indicated unless otherwise specified.
- 1.2 The specifications are written in the singular with the understanding that identical work, materials, and equipment shall be provided for all vertical transportation units identified unless otherwise specified.
- 1.3 Interim Maintenance coverage will be furnished from the award of the modernization project until final acceptance of the last unit (on a per building basis).
 - 1.3.1 Interim period duration will be based on the schedules submitted in the contractor's proposal beginning with formal contract award.
- 1.4 Guarantee Maintenance shall commence immediately after acceptance of the last unit (on a per building basis) and continue for a period of twelve (12) months.
 - 1.4.1 Any deficiencies identified by the Consultant prior to the expiration of the guarantee period shall be resolved by the contractor. If the identified items are not resolved, MPHHA reserves the right to extend the guarantee period in two (2) month increments until such items are completed.
- 1.5 With the exception of only those items specifically identified as being performed by others, the contract specifications are intended to include all engineering, material, labor, testing, and inspections needed to achieve work specified by the contract. Inasmuch as it is understood that any incidental work necessary to execute the agreement is also covered by the contract specifications, the Contractor is cautioned to familiarize himself with the existing equipment and job site conditions. Additional charges for material or labor shall not be permitted subsequent to execution of the Contractual Agreement for work, services or procedures covered herein.
- 1.6 Maintenance coverage shall include, but is not limited to, preventive services, emergency callback services, inspection and testing services, repair, and/or direct replacement component renewal procedures.
- 1.7 Maintenance coverage during the Interim period when any elevator is removed from service to be modernized, on a per-building basis, shall be all inclusive of any callbacks, parts and repair work required to maintain operational elevators at all times. During this period there will be no additional costs for labor

and materials required to maintain this level of service twenty-four (24) hours a day/seven (7) days per week for the duration of the limited availability.

2.0 Services and Payment.

2.1 Scope of Services. The services provided under this contract generally consist of the MPHA's need for elevator modernization and elevator maintenance as described herein and specifically within the Technical Specifications. The MPHA shall retain the right to implement and/or enforce any item issued as a part of IFB No. B23025.

2.2 Provisions of any and all Work (Work Orders). Contractor shall not begin any work without the receipt of a fully executed contract and a fully executed Notice to Proceed from the authorized MPHA representative.

2.3 Cost/Value of Services.

2.3.1 Contract Value. In consideration for Contractor's performance under this contract, MPHA agrees to pay Contractor a firm-fixed price of:

\$____.____

2.4 Billing Method.

2.4.1 To receive payment for services rendered under this contract, Contractor shall submit a fully completed invoice for work previously performed to:

**Minneapolis Public Housing Authority
Attention: Accounts Payable, Suite 307
1001 N. Washington Avenue, Minneapolis, MN 55401**

2.4.2 At a minimum, the invoice shall detail the following information:

2.4.2.1 Unique invoice number;

2.4.2.2 Contractor's name, address, and telephone number;

2.4.2.3 Date of invoice and/or billing period;

2.4.2.4 Contract number;

2.4.2.5 Brief description of services rendered, including applicable time frame, total hours being billed for each service at each detailed site;

2.4.2.6 Asset Management Project (AMP) or address where the work was performed;

2.4.2.7 Total dollar amount being billed;

2.4.2.8 A statement certifying all wage reporting requirements for the work included in the billing period are satisfied;

2.4.2.9 All supporting documentation for services being billed including, but not limited to subcontractor invoices, material receipts, time logs, etc.; and

2.4.2.10 The Minneapolis Public Housing Authority Contractor Sales Tax Documentation form shall be completed and included with every invoice including subcontractor invoices. State and local taxes shall be separated and properly documented with material receipts.

2.4.3 The MPHA shall withhold a 5% retainage from each progress payment consistent with applicable laws and regulations. Notwithstanding any other provision to the contrary, the MPHA may make full payment for equipment and materials delivered to the job site or stored offsite if the equipment and materials are suitably stored, the equipment and materials are protected by suitable insurance, and upon payment, the MPHA receives the equipment and materials free and clear of all liens and encumbrances. The MPHA may release the retainage when the project is substantially completed to the satisfaction of the MPHA. The MPHA may reduce or eliminate the retainage if work is progressing satisfactorily. Subcontractors, if any, may request retainage on their final progress payment if their work is complete.

2.4.4 Contractor shall submit one progress payment each month that shall include all subcontractors' work completed and approved by the MPHA. A progress payment shall not be an acceptance or approval of any work, or the waiver of any defect or violation of the contract.

2.4.5 The MPHA will pay each such properly completed invoice received on a Net/30 basis. Any invoice received not properly completed will not be paid unless and/or until Contractor complies with the applicable provisions of this contract.

2.4.6 Contractor shall deliver to the MPHA an invoice each month for services performed the previous month.

3.0 Hours of Work

3.1 All scheduled service or repair work other than the period identified in Section 1.7 shall be performed with no overtime charges between 8:00 a.m. to 4:30 p.m., Monday through Friday, except union designated holidays.

3.2 Scheduled repairs during the Guarantee period and/or other major adjustment procedures necessitating removal of an elevator for an extended period of time must be scheduled through the MPHA or MPHA Designee.

3.3 Emergency callback services shall be provided 24 hours per day, 7 days per week including weekends and holidays as further specified herein.

4.0 Sole Responsibility

4.1 The maintenance work shall be performed only by Qualified Technicians and Mechanics directly employed and supervised by the Contractor, who are experienced and skilled in maintaining vertical transportation units similar to those to be maintained under this Contract and shall not be assigned or transferred to any agent or subcontractor without the express consent of the Owner's Designee or Purchaser.

4.2 It is mutually agreed that the Contractor shall not be under any obligation hereunder to make any repairs or replacements except those incidental to the normal operation of the machinery, and that the Contractor is not required under this Contract to make repairs or replacements necessitated by reason of malicious damage, fire, including non-elevator component electrical fire, which are the result of causes beyond

Contractor's control. All repairs, if necessitated by this paragraph, will be performed at a fee not to exceed the standard rate in effect at the time service is performed.

4.2.1 It is mutually agreed that the Contractor shall make any and all repairs or replacements damaged by Contractor's improper repair, negligent or willful acts or omissions.

5.0 Subsequent Equipment Modernizations/Alterations/Upgradings

- 5.1** Full comprehensive service and repair coverage shall be included under the terms of this agreement when equipment and/or component systems represented herein are modified or upgraded.
- 5.2** Such changes in equipment necessitating continuing full maintenance coverage may be initiated by the Owner under a separate voluntary extra cost upgrading agreement with or without this Contractor's permission or direct authorization and involvement before the work is performed.
- 5.3** All non-elective changes or modifications necessitated due to obsolescence, parts unavailability or the Contractor's inability to maintain these systems in accordance with the contract specifications shall be fully covered under this agreement regardless of application, method or cost assignment for the life of the contract.
- 5.4** Modernized or otherwise upgraded systems and parts thereof shall automatically be included under the terms of this full comprehensive agreement whether such components are specifically identified or not without extra cost to the Owner.

6.0 Notice by Authority or Company to Repair or Replace

- 6.1** The Contractor shall comply with all written recommendations of the governing authority or independent inspectors, consultants and insurance carriers employed by the Owner. However, Contractor is not required under this Contract to install new attachments or parts other and different from those now constituting the equipment, as recommended or directed by insurance companies, Government Authorities, or otherwise.

7.0 Record Keeping

- 7.1** A complete permanent record of inspections, maintenance, lubrication and callback service shall be kept in the machine room or other designated location at the site of work. These records are to be available to Owner's Designee at all times. The records shall indicate the reason the mechanic was in the building, arrival and departure time, the work performed, etc., and these records will be property of the Owner. Record keeping requirements shall include Contractor assigned maintenance personnel and scheduled preventive maintenance procedures, inspections, tests and third party assisted examinations.

8.0 Record Drawings

- 8.1** Contractor shall provide and maintain two (2) complete sets of updated electrical wiring diagrams and control schematic drawings on file with the building and they are to become the property of the Owner for each group and/or individual system.

9.0 Reports by Contractor

- 9.1** The Contractor shall, at any time during the term of this Contract, upon written request of the Owner, render a report of inspections, repairs or replacements made by the Contractor at the premises herein, itemized as to parts installed or services performed, and supply samples of lubricants, compounds, or other materials employed.

9.1.1 Contractor shall prepare and issue all required forms and/or reports relative to examinations, tests and inspections as specified herein.

10.0 Contractor's Obligations. Contractor agrees to provide the specific services detailed herein and also shall be responsible for the following:

10.1 Supervision and Oversight. Contractor shall be solely responsible for providing supervision and oversight to all of Contractor's personnel assigned to the MPHA properties under this contract.

10.2 Qualified Personnel. The maintenance work shall be performed only by Qualified Technicians and Mechanics directly employed and supervised by the Contractor, who are experienced and skilled in maintaining vertical transportation units similar to those to be maintained under this contract and shall not be assigned or transferred to any agent or subcontractor without the express written consent of the MPHA or MPHA Designee.

10.3 Materials. All materials and parts are to be new and of the best quality of the kind specified. Installation of such materials shall be accomplished in a neat workmanlike manner. In case the Contractor should receive written notification from the MPHA stating the presence of inferior, improper, or unsound materials or workmanship, the Contractor shall, within twenty-four (24) hours proceed to remove such work or materials and make good all other work or materials damaged thereby. If the MPHA permits said work or materials to remain, the MPHA shall be allowed the difference in value or shall, at its election, have the right to have said work or materials repaired or replaced as well as the damage caused thereby, at the Contractor's expense, at any time during the contract term; and neither payments made to the Contractor, nor any other acts of the MPHA shall be construed as evidence of acceptance and waiver.

10.4 Payment for Emergency Callback Services (Guarantee Period only) shall be:

10.4.1 Included in the monthly lump sum price for procedures performed during regular working hours of regular working days of the elevator trade. If overtime services are requested for work covered by this agreement, the MPHA shall pay for the bonus (overtime) portion of such hours applicable only. Base labor hours shall be included in the monthly maintenance price with extra charges limited to the premium labor portion of work approved by the MPHA's Designee.

10.4.2 Any billable labor per this agreement during the Interim period shall be at the rates in Contract Appendix 11.

10.5 Payment Adjustment During Interim Maintenance. Interim monthly invoicing shall be adjusted during the period detailed in Section 1.7 to reflect units being removed from service for modernization.

10.6 Scheduled Preventative Maintenance Labor. Contractor shall provide scheduled systematic examinations, adjustments, cleaning and lubrication of all machinery, machinery spaces, hoistways and pits. The Contractor shall include a minimum of four (4) hours per month per unit that is to be dedicated to routine preventative maintenance.

10.7 Scheduled Preventative Maintenance Labor. Contractor shall provide a code compliant Maintenance Control Program (MCP) with scheduled systematic examinations, adjustments, cleaning, and lubrication of all machinery, machinery spaces, hoistways and pits. The Contractor shall include a specified minimum number of hours per quarter per unit that is to be dedicated to routine preventative maintenance. The required frequency for the scheduled systematic examinations and the specified minimum hours for routine preventative maintenance are as specified in this contract. Hours assigned to meeting the specified minimum hours for routine preventative maintenance shall not include callback or emergency/unscheduled repair hours. Hours performed on routine preventative maintenance that coincides with a callback or emergency/unscheduled repair may be assigned to meeting the specified minimum hours.

10.8 Cleaning. The Contractor shall, during the course of all examinations, remove and discard immediately all accumulated dirt and debris from the machine rooms, car tops and pit areas. Prior to the anniversary date of this Agreement, Contractor shall thoroughly clean down the entire hoistway of all accumulated dirt, grease, dust, and debris.

10.9 Inspections/Tests.

10.9.1 The Contractor shall conduct Safety, Efficiency and Maintained Conditions surveys, inspections and tests as follows:

10.9.1.1 Semi-Annual quality control evaluations by a qualified supervisor to ensure and confirm the services and procedures as specified herein are properly executed relative to maintenance and performance standards for the systems serviced.

10.9.1.2 Mandated inspections and testing in accordance with ASME A17.1 Standards applicable per local law; filing of all procedures and payment of all relative fees per the Authority Having Jurisdiction (A.H.J.) and preparation of reports within the required time periods for the examination(s) rendered.

10.9.1.2.1 The MPHA retains the right to engage the services of a third-party qualified and certified agency for the sole purpose of witnessing mandated inspections and tests performed by the Contractor. Should the MPHA elect to utilize this provision, the Contractor shall conform to the third-party agency schedule and provide qualified labor at no additional charge to the MPHA.

10.9.1.3 If applicable, independent testing of Fire Emergency Operating Systems and/or Emergency Power System tests in accordance with local law requirements and ASME standards.

10.9.1.3.1 The MPHA retains the right to have these tests performed on a not-to-interfere basis at any hour of the day and any day of the week; and the cost for overtime work shall be limited to the premium labor portion for work performed on an overtime basis.

10.9.1.3.2 Failure to perform any code required testing during the month identified for the annual testing will result in a reduction of payment for that month and each subsequent partial or complete month, until the testing is performed, by 50%.

10.9.2 The Contractor shall annually conduct testing of the hoistway ventilation systems in all applicable buildings. The Contractor shall:

10.9.2.1 Verify operation of all lobby key switches and indicators.

10.9.2.2 Verify dampers fully open and close.

10.9.2.3 Notify MPHA of any system deficiencies and assist MPHA with any request to run the elevator to access equipment inside the hoistway.

10.9.2.4 Time requested to assist the MPHA shall be billed as an extra to the contract and billed at the Contractor's hourly billing rates established by this agreement.

10.10 Emergency Callback Service (24 Hours, 7 Days Per Week)

10.10.1 Provide emergency callback service which consists of promptly dispatching qualified employees in response to requests from the MPHA or MPHA representative, by telephone or otherwise, for emergency adjustment or minor repairs on any day of the week, at any hour, day, or night. If repairs cannot be made immediately, the mechanic shall notify the MPHA's Representative as to the reason why and provide supplemental information regarding the restoration of services.

10.10.1.1 Callback service in response to passenger entrapments shall be provided within one-half (½) hour during regular working hours (8:00 a.m. – 4:30 p.m.) and within one (1) hour during overtime periods.

10.10.1.2 Callback services for out-of-service units that have been secured by the Owner's Representative or are non-functional shall be provided within one (1) hour during regular working hours and within two (2) hours at any other times.

10.10.1.3 Callback services for non-essential system malfunctions that do not constitute an operational or other safety condition shall be provided during normal working hours of regular working days within four (4) hours of the request for service.

10.11 Repairs, Renewals, and Replacements

10.11.1 Repairs, renewals, and replacements shall be made by the Contractor as soon as scheduled or other examinations reveal the necessity of the same, or when the MPHA so advises the Contractor under the terms of this Agreement. It is understood and agreed that repairs, renewals, and replacements shall be made in accordance with high standards of preventive maintenance practice and that the repair and renewals of parts made shall be equal in design, workmanship, quality, finish fit, adjustment, operation and appearance to the original installation and that replacements shall be new and genuine parts equal to those parts supplied by the manufacturer of the original equipment or its successor, and shall apply to the repair, renewal, or replacement of all mechanical, electronic, and electrical parts, including but not limited to the following:

10.11.1.1 Automatic door systems, power operated door systems and door systems complete.

10.11.1.1.1 Power operator and engagement linkages

10.11.1.1.2 Car door top track and hanger roller assemblies

10.11.1.1.3 Car door track liners, eccentrics, stops, bumpers and related operating mechanisms for multiple speed or multiple panel doors.

10.11.1.1.4 Car gates, bottom guides, retainers, fire stops, gibs, entrance sills and protection guards.

- 10.11.1.1.5** Electrical safety switches and activation mechanisms, door protective and/or retracting devices, and power door operators.
- 10.11.1.1.6** Electromechanical safety interlock assemblies, related operating mechanisms, clutch or other master system engaging devices, linkages, zoned locking devices, and self-closing devices.
- 10.11.1.2** Car frame, platform, and car safety devices complete.
 - 10.11.1.2.1** Crosshead, stiles, hitch plates, tie rods, supports and related structures.
 - 10.11.1.2.2** Car guides, shoes, stands, spindles, gibs, rollers and tensioning devices.
 - 10.11.1.2.3** Sub-platform, under car platform fireproofing, car sills with support cradles, top exit access operating/safety hardware and electrical switches.
 - 10.11.1.2.4** Car fans, blowers, and cab ventilation systems.
- 10.11.1.3** Controls, selectors, power drives, encoding devices with related wiring, conduit, and circuitry complete.
 - 10.11.1.3.1** Relays, contactors, switches, capacitors, resistors, fuses, circuit breakers, overloads, power supplies, regulators, tach generators, arc shields, shunts, holders, and hardware.
 - 10.11.1.3.2** Circuit boards, transmitters, encoders, transformers, rectifiers, transistors, solid state switching devices, insulators, timing devices, suppressors, and computer apparatus.
 - 10.11.1.3.3** Filters, fans, blowers, wiring, studs, terminal blocks, plug connectors, CRTs or other diagnostic devices, keyboards, and printers.
 - 10.11.1.3.4** Cabinets, isolation transformers, chokes, diagnostic tools, status indicators, solid state, and hard wire circuitry.
- 10.11.1.4** Car and counterweight safety systems.
 - 10.11.1.4.1** Overspeed governors and electromechanical safety devices, wire ropes and tensioning devices with related hitch and connection apparatus complete.
 - 10.11.1.4.2** Car and counterweight safety devices, drums, rods, linkages, clamps and hardware.
- 10.11.1.5** Hoistway and pit equipment.

- 10.11.1.5.1** Guide rails, fishplates, brackets, inserts and related hardware to include jack bolts or other special mechanisms for mounting and alignment.
- 10.11.1.5.2** Wire ropes, chains and cables used for suspension with related hitch and connection hardware complete.
- 10.11.1.5.3** Corridor entrance top track and hanger rollers, toe guards, fascias, dust covers, sills, stops, bumpers, eccentrics, retainers, and bottom guides.
- 10.11.1.5.4** Overhead machine room, secondary and 2:1 wire rope sheaves, shafts, bearings, bushing, seals, mounting supports, lubrication devices, guards and hardware complete;
- 10.11.1.5.5** Electrical wiring and conduit, electrical traveling cables, electrical limits, slowdowns, activating cams, switches, vanes, inductors, tapes, readers, leveling and encoding systems complete with all related hardware and wiring.
- 10.11.1.5.6** Compensation sheaves, shafts, frames, guides, switches, rollers, cams, guards, “S” hooks, guidance systems and all related hardware;
- 10.11.1.5.7** Counterweight assemblies, guides, rollers, stands, strike plates, safeties and hitch devices;
- 10.11.1.5.8** Car and counterweight buffer, stands, strikes, blocking, platforms, extension devices, mounting hardware and appurtenances;
- 10.11.1.5.9** Pit safety switches, cable tensioning devices, access ladders, light switches, lighting assemblies, bulbs and guards.
- 10.11.1.6** Operating and signal fixtures with electrical wiring.
 - 10.11.1.6.1** Car operating panels, pushbuttons, stop switches, audible signals, keyed or other control switches, visual signals, jewels, and indicators with electrical wiring.
 - 10.11.1.6.2** Car position indicators, riding lanterns, signal annunciators, visual and audible signals complete.
 - 10.11.1.6.3** Corridor pushbutton stations, hall lanterns, hall position indicators, keyed switches, access controls, electrical wiring and traveling cables complete.
 - 10.11.1.6.4** Emergency lighting systems, emergency communication devices, and signal systems complete.
 - 10.11.1.6.5** Corridor and lobby fixtures with remote controls and operational monitoring devices, starter panels, emergency power selectors, telltale panels, location indicators, security controls and monitors.

- 10.11.1.7** Hydraulic systems' components, including but not limited to, tanks, valves, pump, cylinder head, above ground piping, hoses, fittings including shutoff valves, gauges, seals, o-rings, filters, screens, packings, belts, recovery devices overflow devices, rescuvator or other emergency operating and signal systems, above grade cylinder and plunger assemblies complete, mufflers, heaters and shut-off valves.
- 10.11.1.8** The Contractor shall repair and/or replace all electrical traveling cables, wiring and conductors extending to the controls from main line switch in the Machine Room and outlets in the hoistways.
- 10.11.1.9** The Contractor shall be responsible for relamping all lighting fixtures in the pit, machine room, and hoistway (excluding cab lighting) as required. If cab relamping requires access from the car top to do so, then the Contractor will be required to relamp these devices. The Owner is to provide any lighting elements required.
- 10.11.1.10** The following items of equipment are excluded: Main line power switches and fuses, car enclosure, car doors, hoistway enclosures, hoistway doors and door frames, buried hydraulic piping, cylinder and conventional below grade plunger assemblies.
- 10.12** All parts considered billable per this agreement are limited to the Contractor's actual costs plus a ten percent (10%) markup.
- 10.13** During any unforeseen event i.e., water damage, Contractor must include Consultant in all site visits and meetings and every effort should be made to include AHJ. Any list developed by the QEI certified representative of the elevator contractor shall be approved by the consultant prior to submittal to the AHJ.
- 10.14 Scheduled Service Procedures**
- 10.14.1** In addition to scheduled and emergency repairs, renewals and testing, Contractor's maintenance requirements shall include but are not limited to:
- 10.14.1.1** Examination of wire ropes to maintain proper tensioning and legal bottom clearances on a monthly basis for shortening and adjusting ropes as required and performance of all reshackling procedures per ASME A17.1 standards and local laws in conjunction with maintenance of related slack cable devices, machine limits or other safety equipment.
- 10.14.1.2** Cleaning of all hoist ropes as often as necessary to maintain traction characteristics and allow for proper inspection.
- 10.14.1.3** Lubricating hoist ropes as often as and in the manner specified by the hoist rope manufacturer.
- 10.14.1.4** Re-lamping signals, as required, during regular examinations. Whenever possible, all replacement indicator lamps shall be the "LED" type.
- 10.14.1.5** Removing only one (1) elevator in a building at a time from service for performing routine maintenance.
- 10.15 Performance Times, Leveling and Contract Speed.**

- 10.15.1** The control system shall be maintained to provide smooth acceleration and retardation. Contractor must maintain elevators in accordance with the original equipment manufacturer (O.E.M.) design performance specifications (including floor-to-floor times, door timing, rated speed, group supervisory system, etc.). The door close pressure must never exceed 30 pounds. The following performance schedule shall be adhered to:
- 10.15.1.1** Contract Speed: The contract speed shall be provided for up direction travel with full-capacity load in the elevator car. The speed in either direction under any loading condition shall not vary more than 2% of the contract speed.
 - 10.15.1.2** In accordance with the ASME A17.1 Code, the elevators shall be maintained and adjusted to safely lower, stop and hold the car with a load of 125% of the rated capacity.
 - 10.15.1.3** Leveling Accuracy: The elevator shall be adjusted to provide accurate leveling within 1/4" ± of the floor level without releveling regardless of load.
 - 10.16.1.4** Door Operating Times:
 - 10.16.1.4.1** Opening Time – as per modernization Specifications.
 - 10.16.1.4.2** Closing Time – as per modernization specifications.
 - 10.16.1.5** Non-interference Door Dwell Times – 1.0 seconds to 2.5 seconds. Door Open Duration After Protective Shield is Reestablished is defined as the length of time the car doors remain open after an object has passed through the protective shield until the car doors begin to close. This time is measured in seconds from the stop in the motion of the car doors until the restart of the closing motion of the car doors.
 - 10.16.1.6** Performance Time – as per modernization specifications. Performance Time is defined as the time required for the movement of a car between two (2) floors, including the door closing and effective door opening for passenger transfer. The time is measured in seconds from the start of door closing at one floor until the car is stopped (within stopping accuracy) at the next floor with the doors opened, 2/3 of the opening, for passenger transfer.
 - 10.16.1.7** Car Call Dwell Time – 3.0 seconds to 5.0 seconds. Door Open Duration for a Car Call is defined as the length of time the car doors remain fully open in response to a car call without anyone passing through the protective shield. This time is measured in seconds from the stop in the open motion of the car doors until the start of the closing motion of the car doors.
 - 10.16.1.8** Hall Call Dwell Time – 5.0 seconds to 8.0 seconds. Door Open Duration for a Hall Call is defined as the length of time the car doors remain fully open in response to a lobby call without anyone passing through the protective shield. This time is measured in seconds from the stop in the open motion of the car doors until the start of the closing motion of the car doors.

10.16 Parts and Inventory and Wiring Diagrams.

10.16.1 The Contractor shall maintain an inventory of spare parts at the site of the work for scheduled preventive maintenance procedures and common emergency callback service repairs. Such parts shall include but are not limited to contacts, coils, solid-state boards, relays, resistors, timing devices, computer devices, interlock safety switch and linkage parts, bottom guides, door closers, fuses, bulbs, car guides and an assortment of hardware.

10.16.2 The Contractor shall maintain and continually update wiring diagrams and control schematics to ensure “as built” documents remain on site and the property of the MPHA per the maintenance agreement.

10.17 Protection of Work and Property. The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the MPHA’s property from injury or loss arising out of this contract. The Contractor shall make good any such damages, injury, or loss, except such as may be directly caused by agents or employees of the MPHA. The Contractor shall provide all barricades required to protect open hoistways or shafts per OSHA regulations. Such protection shall include any necessary guards or other barricades for employee protections during and after the maintenance procedure.

10.18 Insurance Requirements. Contractor shall purchase and maintain insurance as required to protect Contractor and the MPHA from claims set forth in items 4.20.1 through 4.20.3 below that may arise out of, result from, or are in any manner connected with: (1) the execution of the work under this contract, or (2) occur or result from the use by Contractor, its agents or employees, of materials, equipment, instrumentalities or other property, whether the same be owned by the MPHA, Contractor, subcontractors or third parties. The insurance required hereunder shall be effective and apply whether such claims arise by Contractor or by anyone directly or indirectly employed by Contractor or by anyone for whose acts Contractor may be liable.

Contractor shall require its subcontractors, if any, to comply with all insurance requirements in this contract. Contractor shall at all times be responsible for determining and ensuring that its subcontractors are insured as required by the contract. The premiums, costs, and charges for any such insurance shall be paid by each subcontractor at its own expense. The insurance required to be obtained under the contract shall be written for not less than the limits of liability specified below or required by law, whichever is greater. The types of claims, required coverages and minimum limits of liability are as follows:

10.18.1 Worker's Compensation Insurance/Employer's Liability. Claims under Contractor's Workers' Compensation disability benefit and other similar employee benefit acts; claims for damages because of bodily injury, occupational sickness or disease or death of employees. Insurance coverage shall include Statutory Workers' Compensation, including Employers Liability with a minimum limit of \$1,000,000 each accident, \$1,000,000 Disease-Policy Limit, \$1,000,000 Disease Each employee.

<u>TYPE OF COVERAGE</u>	<u>LIMITS OF LIABILITY</u>
• WORKER’S COMPENSATION	STATUTORY
• EMPLOYER’S LIABILITY	Bodily Injury by Accident: \$1,000,000 each accident.
	Bodily Injury by Disease: \$1,000,000 each employee.
	Bodily Injury by Disease: \$1,000,000 policy limit.

10.18.2 Commercial General Liability Insurance on an Occurrence Basis including:

Claims for damages because of bodily injury, occupational sickness or disease, or death, by any person other than employees; claims for personal injuries which are sustained by (1) any person as a result of an act or omission directly or indirectly related to the employment of such person by Contractor, or (2) any other person; claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom. Insurance coverages shall include:

- Premises – Operations
- “Per Project” Endorsement
- Blanket Contractual Liability
- Broad Form Property Damage
- Blanket Contractual Liability including contractual liability assumed by this Contract.
- Personal Injury
- Operations of Independent Contractors

TYPE OF COVERAGE

LIMITS OF LIABILITY

- COMPREHENSIVE GENERAL LIABILITY \$5,000,000 Including:
Bodily Injury, Property Damage,
Personal Injury and contractual
liability.

Commercial General Liability insurance required under this paragraph shall be written on an occurrence form. Coverage to follow form of underlying policies.

10.18.3 Automobile Liability Insurance. Claims for damages because of bodily injury or death of any person, or any property damage, arising out of the ownership or use of any motor vehicle. Insurance coverage shall include Commercial Automobile Liability insurance including owned, hired, and non-owned vehicles with limits of liability of \$1,000,000 Combined Single Limit for each occurrence for bodily injury and death, or property damage.

TYPE OF COVERAGE

LIMITS OF LIABILITY

- COMPREHENSIVE AUTOMOBILE LIABILITY
 - BODILY INJURY \$1,000,000 EACH PERSON
\$1,000,000 EACH OCCURRENCE
 - PROPERTY DAMAGE \$1,000,000 EACH OCCURRENCE

The foregoing insurance policies shall be primary to any other insurance which may be carried by Contractor and shall name the MPHA and Van Deusen & Associates, Inc. as additional insureds with a specific policy endorsement as follows:

Minneapolis Public Housing Authority
Van Deusen & Associates, Inc.

The limits of liability specified above shall be considered minimum requirements. Approval of the insurance by the MPHA shall not relieve or decrease the liability of Contractor. The MPHA does not in any way represent that the insurance or limits of insurance specified above are sufficient or adequate to protect Contractor’s interests or liabilities but are minimums. Employer’s Liability, Commercial General Liability and Automobile Liability insurance may be arranged under single policies for full minimum limits required, or by a combination of

underlying policies with the balance provided by an Excess or Umbrella Liability policy, where Excess or Umbrella policy provides "form follows policy" coverage.

Contractor shall endorse its Automobile Liability, Commercial General Liability and Umbrella/Excess Liability policies to add the Minneapolis Public Housing Authority and Van Deusen & Associates, Inc. as additional insureds with respect to liability arising out of (a) operations performed for the MPHA by or for Contractor, (b) Contractor's completed work under this contract, (c) claims for bodily injury or death brought against any of the additional insureds by Contractor's employees, or the employees of its subcontractors of any tier, however caused, related to the performance of the work under this contract. Such insurance afforded to the MPHA as additional insured under Contractor's policies shall be primary insurance and not excess over, or contributing with, any insurance purchased or maintained by the MPHA or others required to be included as additional insureds. The additional insured status must be reflected on Contractor's Certificate of Insurance to the MPHA.

Contractor will further provide Certificates of Insurance with additional insured status per the above requirements on an annual basis, naming the MPHA as additional insured per the above requirements.

Certificates of Insurance and policy endorsements indicating additional insured status shall be filed with the MPHA prior to commencing any work hereunder. The MPHA shall not be obligated to review certificates or other evidence of insurance, or to advise Contractor of any deficiencies in such documents, and receipt thereof shall not relieve Contractor from, nor be deemed a waiver of the MPHA's right to enforce, the terms of Contractor's obligations under this contract. All insurance policies shall contain a provision that coverages and limits afforded thereunder shall not be canceled without thirty (30) days prior written notice to the MPHA. The MPHA shall have the right to examine any policy or endorsements required under this contract.

All insurance policies required to be obtained by Contractor and its subcontractors hereunder shall include a waiver of subrogation by endorsement or otherwise in favor of the MPHA and its agents, employees, officers, directors, and lenders. The waivers of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurance interest.

Failure to maintain the above-referenced insurance coverage, including naming the MPHA and Van Deusen & Associates, Inc. as additional insureds (where appropriate) during the term(s) of this contract shall constitute a material breach thereof. Insurance certificate(s)/endorsement(s) shall be delivered to the following person representing the Agency:

**Minneapolis Public Housing Authority
Attention: Molly Prahm, Senior Buyer
1001 N. Washington Avenue, Minneapolis, MN 55401**

- 10.19 Licensing.** Contractor shall also provide to the MPHA a copy of any required licenses. Failure to maintain these licenses in a current status during the term(s) of this contract shall constitute a material breach thereof.
- 10.20 COVID-19 Protocol.** The Contractor shall comply with all applicable MPHA COVID Protocols as outlined in Appendix 8.
- 10.21 Payment/Terms.** All replacement parts, repairs, adjustments, and associated services, as specified herein, shall be supplied, installed, performed, and conducted at the Contractor's sole cost and expense unless otherwise specified herein.

10.21.1 The MPHA agrees to pay the Contractor on a monthly basis the fees established.

10.21.1.1 Monthly invoices shall indicate the base monthly portions of the contract amount due under the agreement for maintenance services.

- 10.21.1.2 Any state or local tax charges which may be applicable are not included in the monthly fee indicated and shall be itemized on the monthly billing invoice statement accordingly.
- 10.21.1.3 Extraordinary work and/or other work, as approved by the MPHA, shall be invoiced separately upon completion and acceptance of the work or other services performed.
- 10.21.1.4 When any unit is removed from service to be modernized during the Interim period, the monthly rates shall be adjusted for that building to reflect only the units remaining in service. These units once modernized and returned to service while another unit is removed for modernization shall revert back to the Interim Maintenance rate until the start of the Guarantee period begins.

10.22 Non-Payment

- 10.22.1 The MPHA may have the Contractor's work and systems' performance operations checked monthly to ensure the Contractor is performing in accordance with this contract. If the work requirements are not maintained, the MPHA will retain the monthly payment to the Contractor until the Consultant verifies that the work and/or operating performance is back to standard.
- 10.22.2 The Consultant, MPHA and/or MPHA's Designee may withhold approval for payment on any request to such extent as may be necessary to protect the MPHA from loss on account of:
 - 10.22.2.1 Negligence on the part of the Contractor to execute the work properly or failure to perform any provisions of the contract. The MPHA, after three (3) days written notice to the Contractor, may, without prejudice to any other remedy, make good such deficiencies and may deduct the cost of the contract.
 - 10.22.2.2 Claims filed or reasonable evidence indicating probable filing of claims due to the Contractor's failure to perform.
 - 10.22.2.3 Failure of Contractor to make payments properly to subcontractors for material and labor used to fulfill contractual requirements.
 - 10.22.2.4 Damage to the building as a result of work performed or another subcontractor's failure to perform.

10.23 Errors and Omissions.

- 10.23.1 Contractor shall notify the MPHA and Consultant in writing regarding any necessary services, coverage or items which may have been omitted from the maintenance contract specifications and any irregularities, discrepancies or duplications that could affect the full comprehensive intent of the agreement.
 - 10.23.1.1 Any duplication of work or coverage is specified as a means of demonstrating the contract requirements, but such duplication if any, is not intended to expand coverage or increase requirements for such work or services and such duplication shall not increase costs or provide justification for extra or additional charge to the MPHA.

10.24 Financial Viability and Regulatory Compliance.

- 10.24.1** 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. Contractor further warrants and represents that it owes no outstanding delinquent federal, state or local taxes or business assessments.
- 10.24.2** Contractor agrees to promptly disclose to the MPHA any IRS liens or licensure suspension or revocation that may adversely affect its capacity to perform the services outlined within this contract. The failure by Contractor to disclose such issue to the MPHA in writing within 5 days of such notification received will constitute a material breach of this contract.
- 10.24.3** Contractor further agrees to promptly disclose to the MPHA any change of more than 50% of its ownership and/or any declaration of bankruptcy that Contractor may undergo during the term(s) of this contract. The failure of Contractor to disclose any change of more than 50% of its ownership and/or its declaration of bankruptcy within 5 days of said actions shall constitute a material breach of this contract.
- 10.24.4** All disclosures made pursuant to this section of the contract shall be made in writing and submitted to MPHA within the time periods required herein.

10.25 State and Federal Data Privacy Statement. Contractor may have access to information or data that is classified as “private, confidential, not-public or non-public” under the Minnesota Government Data Practices Act and applicable Federal law. Contractor shall maintain the confidential nature of any data or information received in the course of providing services and shall not otherwise breach the security of the data as defined by the Minnesota Government Data Practices Act. The unauthorized disclosure of “private, confidential, not-public or non-public” data is subject to civil and criminal penalties under the Minnesota Government Data Practices Act and applicable Federal law.

10.26 Kari Koskinen Law. All Contractors shall complete a Kari Koskinen background check in compliance with Minnesota Statutes 299C.67 and 299C.68 on all persons (including Contractor’s employees as well as any Subcontractor’s employees) who will perform work inside an occupied tenant unit. The Contractor shall ensure that those persons do not have a conviction for a disqualifying crime.

10.27 W/MBE and Section 3 Participation. The MPHA has established minimum women and minority-owned business (W/MBE) and Section 3 business goals. The MPHA’s participation goals are based upon the contract amount and are 7% for women-owned businesses, 20% for minority-owned businesses. In addition, 25% of the total labor hours worked on MPHA projects must be worked by Section 3 workers, of which 5% must be worked by Targeted Section 3 workers.

11.0 Modification. This Contract shall not be modified, revised, amended, or extended except by written change order or addendum.

12.0 Severability. The invalidity of any provision of this contract, as determined by a court of competent jurisdiction and/or HUD, shall in no way affect the validity of any other provision.

13.0 Applicable Laws.

13.1 Compliance with Federal and State Laws. All work performed by Contractor pursuant to this contract shall be done in accordance with all applicable Federal, State and local laws, regulations, codes and ordinances.

13.2 Jurisdiction of Law. The laws of the State of Minnesota shall govern the validity, construction and effect of this contract, unless said laws are superseded by, or in conflict with applicable federal laws and/or

federal regulations. This contract will be binding upon the parties, their heirs, beneficiaries, and devisees of the parties hereto. The parties agree that Hennepin County, Minnesota is the appropriate forum for any action relating to this contract. This contract may be signed in counterparts.

14.0 Notices, Invoices and Reports.

14.1 All notices, reports and/or invoices submitted to the MPHA by Contractor shall be in writing and delivered to the attention of the following person representing the MPHA:

**Minneapolis Public Housing Authority
Attention: Steve Peterson
1001 N. Washington Avenue, Minneapolis, MN 55401**

Or, if appropriate, e-mailed to: **speterson@mplspha.org**.

14.2 All notices submitted to Contractor pursuant to this contract shall be in writing and mailed to the attention of:

Attention: _____

or, if appropriate, shall be e-mailed to: _____@_____.

15.0 2 CFR 200.318, Procurement. Pursuant to this CFR, as issued by the Office of the Secretary, HUD, the MPHA and Contractor each agree:

15.1 Remedies for Contractor Breach. Pertaining to contract-related issues, it is the responsibility of both the MPHA and the Contractor to communicate with each in as clear and complete a manner as possible. If at any time during the term of this contract the MPHA or the Contractor is not satisfied with any issue, it is the responsibility of that party to deliver to the other party communication, in writing, fully detailing the issue and corrective action. The other party shall, within 10 days, respond in writing to the other party (however, the MPHA shall retain the right to, if conditions warrant, require the Contractor to respond in a shorter period of time). Further, the MPHA shall employ the following steps in dealing with the Contractor as to any performance issues:

15.1.1 If the Contractor is in material breach of the contract, the MPHA may promptly invoke the termination clause detailed within Clauses No. 32 and No. 34 of Contract Appendix No. 1, form HUD-5370 (1/2014), *General Conditions for Construction Contracts, Public Housing Programs* and terminate the contract for cause. Such termination must be delivered to the Contractor in writing and shall fully detail all pertinent issues pertaining to the cause of and justification for the termination.

15.1.2 Prior to termination, the MPHA may choose to warn the Contractor, verbally or in writing, of any issue of non-compliant or unsatisfactory performance. Such written warning may include placing the Contractor on probation, thereby giving the Contractor a certain period of time to correct the deficiencies or potentially suffer termination. The MPHA shall maintain in the contract file a written record of any such warning detailing all pertinent information. If the Contractor does not agree with such action, the Contractor shall have 10 days to dispute or protest, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with the MPHA's position. The written protest must detail all pertinent information, including justification detailing the MPHA's alleged incorrect action(s).

- 15.1.3** After termination, if the Contractor does not agree with the MPHA’s justification for the termination, the Contractor shall have 10 days to dispute, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with the MPHA’s position. The written protest must detail all pertinent information, including justification detailing the MPHA’s alleged incorrect action(s).
- 15.1.4** The response to any protest received shall be conducted in accordance with MPHA’s Procurement Policy and Procedures.
- 15.2** **Termination for Cause and Convenience.** As detailed within Clauses No. 32 and No. 34 of Contract Appendix No. 1, form HUD-5370 (1/2014), *General Conditions for Construction Contracts, Public Housing Programs*.
- 15.3** **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).
- 15.4** **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 Part 3).
- 15.5** **Davis-Bacon Act.** 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).
- 15.6** **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 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).
- 15.7** **Reporting.** Both parties shall comply with any reporting requirements that may be detailed herein.
- 15.8** **Patent Rights.** Both parties hereby agree to comply with HUD Bulletin 90-23, which is the (a) Notice of Assistance Regarding Patent and Copyright Infringement.
- 15.9** **Access to Records.** Both parties hereby guarantee access by the grantee, the subgrantee, the Federal grantor MPHA, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of Contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- 15.10** **Record Retention.** Both parties hereby guarantee retention of all required records for six years after grantees or subgrantees make final payments and all other pending matters are closed.
- 15.11** **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 MPHA regulations (40 CFR Part 15).
- 15.12** **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).

16.0 Additional Considerations.

- 16.1 Non-Escalation.** Unless otherwise specified in the IFB documents, the unit prices reflected in the contract shall remain firm with no provision for price increases during the term of the contract.
- 16.2 Funding Restrictions and Order Quantities.** The MPHA reserves the right to reduce or increase estimated or actual quantities in whatever amount necessary without prejudice or liability to the MPHA, if:
- 16.2.1** Funding is not available;
 - 16.2.2** Legal restrictions are placed upon the expenditure of monies for this category of service or supplies; or
 - 16.2.3** The MPHA's requirements in good faith change after award of the contract.
- 16.3 Local, State, and/or Federal Permits.** Unless otherwise stated in the IFB documents, all local, State or Federal permits which may be required to provide the services ensuing from award of this IFB, whether or not they are known to either the MPHA or the proposers at the time of the proposal submittal deadline or the award, shall be the sole responsibility of Contractor and any costs that were submitted by Contractor in response to the IFB shall reflect all costs required by Contractor to procure and provide such necessary permits.
- 16.4 Government Standards.** Contractor shall ensure that all items and services proposed conform to all local, State and Federal law concerning safety (OSHA and NOSHA) and environmental control (EPA and Bureau County Pollution Regulations) and any other ordinance, code, law or regulation. Contractor shall be responsible for all costs incurred for compliance with any such ordinance, code, law or regulation. No time extensions shall be granted or financial consideration given to Contractor for time or monies lost due to violations of any such ordinance, code, law or regulations.
- 16.5 Official, Agent and Employees of the MPHA Not Personally Liable.** In no event shall any official, officer, employee, or agent of the MPHA in any way be personally liable or responsible for any covenant or agreement herein contained, whether either expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this agreement.
- 16.6 Subcontractors.** Unless otherwise stated within the IFB documents, Contractor may not use any subcontractors to accomplish any portion of the services described within the IFB documents or the contract without the MPHA's prior written permission.
- 16.7 Prompt Payment to Subcontractors.** Pursuant to Minn. Stat. § 471.425, subd. 4a, Contractor, as prime contractor, shall pay any subcontractor within ten (10) days of Contractor's receipt of payment from MPHA for undisputed services provided by the subcontractor. Contractor is required to pay interest at 1.5% per month or any part of a month to any subcontractor on any undisputed amount not paid on time to the subcontractor. Contractor shall be responsible for any and all costs associated with subcontractor suspension of work due to failure to promptly pay pursuant to state law.
- For an unpaid balance of less than \$100.00, Contractor shall pay the actual penalty due to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. If subcontractor prevails in a civil action to collect interest penalties from Contractor, Contractor shall pay the subcontractor's reasonable costs and disbursements, including attorney's fees.
- 16.8 Salaries and Expenses Relating to Contractor's Employees.** Unless otherwise stated within the IFB documents, 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. 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 agreement.

- 16.9 Independent Contractor.** Unless otherwise stated within the IFB documents or the contract, Contractor is an independent contractor. Nothing herein shall create any association, agency, partnership or joint venture between the parties and neither shall have any authority to bind the other in any way.
- 16.10 Assignments.** Neither party to the contract shall assign the contract or sublet it as a whole without the written consent of the other, nor shall Contractor assign any payment due it or to become due to it hereunder without the previous written consent of the MPHA.
- 16.11 Waiver of Breach.** A waiver of either party of any terms or condition of this agreement shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, obligation or agreement of either party.
- 16.12 Time of the Essence.** Time is of the essence as to each contract provision in which time of performance is a factor.
- 16.13 Limitation of Liability.** It is expressly understood and agreed by the parties that the MPHA, its parent, subsidiaries and/or affiliates shall not be liable or responsible in any way for any loss of or damage or injury to any equipment as referred to in this Agreement or other personal property belonging to Contractor or any personnel of Contractor while in any area of the building; nor shall the MPHA, its parent, subsidiaries and/or affiliates be liable for any injury suffered by any personnel of Contractor while on or in the MPHA's property. Personnel of Contractor shall make all necessary arrangements for the safety and security of such equipment and other personal property at all times. In no event shall the MPHA be liable to Contractor for any indirect, incidental, consequential or exemplary damages.
- 16.14 Agreement Design.**
- 16.14.1** The parties agree that this Agreement and any attachments, exhibits and/or addenda are contractual in nature and voluntarily entered into by both parties as their free act and deed, acting in their individual judgment without reliance upon any statement or representation of the other party. This Agreement and any attachments exhibits and/or addenda constitutes the entire understanding, oral or written, between the parties, and supersedes any and all prior discussions and/or agreement between the parties. The parties agree that any alteration to any exhibits, attachments and/or addenda noted therein or herein, and attached hereto shall be null and void, unless made in writing by mutual agreement. The parties agree to execute whatever additional documents are deemed reasonably necessary to effectuate this transaction.
- 16.14.2** Both parties have been afforded the opportunity to have this Agreement reviewed by legal counsel and/or other consultants of their choice. The parties agree that the normal rule of construction against the drafter shall not apply to the provisions of this Agreement.
- 16.15 Indemnification.** To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the MPHA and MPHA's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from, or in any manner connected with, the performance under this contract, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is

caused in part by a party indemnified hereunder. This indemnification hold harmless and defense obligation shall survive acceptance of the work under this contract, completion of the work under this contract, or termination, with or without cause, of the contract. Contractor further agrees to obtain, maintain, and pay for such insurance coverage and endorsements as will insure the provisions of this paragraph.

- 16.16 Lobbying Certification.** By execution of this contract with MPHA, Contractor certifies, to the best of its knowledge and belief that it has complied with HUD Form 50071, which has been included in this contract as Appendix 2.
- 16.17 Additional Federally Required Orders/Directives.** Both parties shall comply with the following laws and directives, where applicable:
- 16.17.1 Executive Order 11061**, as amended, which directs the Secretary of HUD to take all action which is necessary and appropriate to prevent discrimination by agencies that utilize federal funds.
- 16.17.2 Public Law 88-352, Title VI of the Civil Rights Act of 1964**, which provides that no person in the United States shall, on the basis of race, color, national origin or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives federal financial assistance. The MPHA hereby extends this requirement to 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. 1901 et. seq.).
- 16.17.3 Public Law 90-284, Title VIII of the Civil Rights Act of 1968.**, popularly known as the Fair Housing Act, which provides for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person because of race, color, religion, sex, or national origin. Pursuant to this statute, the MPHA requires that Contractor administer all programs and activities, which are related to housing and community development in such a manner as affirmatively to further fair housing.
- 16.17.4 The Age Discrimination Act of 1975**, which prohibits discrimination on the basis of age.
- 16.17.5 Anti-Drug Abuse Act of 1988** (42 U.S.C. 11901 et. seq.).
- 16.17.6 HUD Information Bulletin 909-23** which is the following:
- 16.17.6.1** Notice of Assistance Regarding Patent and Copyright Infringement;
- 16.17.6.2** Clean Air and Water Certification; and
- 16.17.6.3** Energy Policy and Conversation Act.
- 16.17.7** That the funds that are provided by the MPHA 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.
- 16.17.8** 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 15, of the United States Code.

16.17.9 The mention herein of any statute or Executive Order is not intended as an indication that such statute or Executive Order is necessarily applicable nor is the failure to mention any statute or Executive Order intended as an indication that such statute or Executive Order is not applicable. Each provision of law and each clause, which is required by law to be inserted in this contract, shall be deemed to have been inserted herein, and this contract shall be read and enforced as though such provision or clause had been physically inserted herein. If, through mistake or otherwise, any such provision is not inserted or is inserted incorrectly, this contract shall forthwith be physically amended to make such insertion or correction upon the application of either part.

17.0 Section 3 Clause. As detailed within 24 CFR 135.38, *Section 3 clause*, the following required clauses are included as a part of this contract.

17.1 Section 3 of the Housing and Urban Development Act of 1968 - ("Section 3") as described in Part 75 - Economic Opportunities for Low- And Very Low-Income Persons - provides that economic opportunities, most importantly employment, generated by certain U.S. Department of Housing and Urban Development ("HUD") financial assistance must be directed to low- and very low-income persons, particularly those who are either recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.

17.2 The procurement that is the subject of this solicitation ("project") will be funded using federal Public Housing Financial Assistance and is subject to Section 3 regulations. As such, this solicitation and the resulting contract award will be required to comply with Section 3 regulations and MPHA's Section 3 Policy.

17.3 As outlined in Appendix 5 – Section 3 Compliance Report, submit quarterly this compliance report. This report requires the Contractor to provide on a quarterly basis the total number of hours worked on MPHA projects for all workers, the number of hours worked on MPHA projects by Section 3 workers, the number of hours worked on MPHA projects by Targeted Section 3 workers and any qualitative efforts undertaken to help achieve compliance with the benchmark requirements. The benchmark requirements are 25% of the total labor hours worked on MPHA projects must be worked by Section 3 workers, of which 5% must be worked by Targeted Section 3 workers. Failure to submit this report will constitute a material breach of this contract which may result in termination for cause and/or withholding of payments until reports are completed and submitted in a satisfactory manner, as deemed by MPHA.

18.0 Appendices.

18.1 The following documents are a part of this contract:

18.1.1 **Contract Appendix No. 1.** Form HUD-5370-C (01/2014), *General Condition for Construction Contracts, Public and Indian Housing Programs;*

18.1.2 **Contract Appendix No. 2.** *Form HUD-50071;*

18.1.3 **Contract Appendix No. 3.** *Sample Notice to Proceed form;*

18.1.4 **Contract Appendix No. 4.** *Davis-Bacon General Wage Decision;*

18.1.5 **Contract Appendix No. 5.** *Section 3 Compliance Report;*

18.1.6 **Contract Appendix No. 6.** *Right to Know form;*

18.1.7 **Contract Appendix No. 7.** *State and Federal Data Privacy Statement;*

18.1.8 **Contract Appendix No. 8.** *MPHA COVID Protocols;*

- 18.1.9** **Contract Appendix No. 9.** *Section 3 Workers Certification Form;*
 - 18.1.10** **Contract Appendix No. 10.** *Technical Specifications;*
 - 18.1.11** **Contract Appendix No. 11.** *Schedule of Contractor’s Hourly Rates;*
 - 18.1.12** **Contract Appendix No. 12.** *Schedule of Contractor’s Maintenance Fees;* and
 - 18.1.13** **Contract Appendix No. 13.** The fees that apply to each procurement that ensues from this Contract.
 - 18.1.14** **Inclusion by Reference.** Included by reference is any document or clause issued as a part of **IFB No. B23025** that the MPHA may choose to include at any time during the performance of this Contract or any options exercised thereto by the MPHA. Further, any document that may be referenced herein that has not been listed above is hereby incorporated herein by reference, and a copy of each such document is available from the MPHA upon written request for such from Contractor.
- 18.2** **Order of Precedence.** Please note that, in the case of any discrepancy between this Contract and any of the above noted appendices, the requirement(s) detailed within the body of this Contract shall take first precedence, then the requirement(s) detailed within each appendix. Contractor shall notify the MPHA if it discovers a discrepancy in the Contract documents.

19.0 **Representations & Certifications.**

- 19.1** Contractor represents that it will (i) perform elevator maintenance services under this Agreement in accordance with acceptable industry professional and ethical standards, (ii) not proceed with performance of various aspects of the Services, unless pre-authorized (“Pre-approved Services”) by the MPHA or MPHA’s Designee at the property, (iii) conduct any handling of MPHA’s Confidential Information in accordance with acceptable industry professional and ethical standards, (iv) not represent to any third party that it has authority to sign, endorse or represent a contractual relationship with or in MPHA’s name, or enter into any agreement on behalf of MPHA in connection herewith (unless expressly pre-authorized in writing by MPHA), (v) safeguard the physical security of MPHA’s Confidential Information if it has access to or possession of such information, (vi) ensure that only “Authorized Representatives” of this Agreement, will have access to any of MPHA’s Confidential Information while rendering the Services, and that it will not be copied, or disseminated to anyone other than the Authorized Representative, and (vii) ensure that all of its employees, representatives, agents or assigns will not solicit any of the MPHA’s employees for any purpose. The Parties agree that any alteration to any of the Appendices or Exhibits hereto shall be null and void, unless made in writing by mutual consent of the Parties. The obligations of Contractor set forth herein shall remain in full force and effect for the later of a period of one (1) year from the date of termination or expiration of this Agreement, or the date the Confidential Information is returned to whomever disclosed such information, after the date of termination or expiration of this Agreement.
- 19.2** The undersigned representative of each party hereby acknowledges by signature below that they have authority to enter into the Contract for their respective entity, have reviewed the foregoing, and understand and agree to abide by their respective obligations as defined herein:

CONTRACTOR:

By: _____ Date: _____
CONTRACTOR NAME

Minneapolis Public Housing Authority:

By: _____ **Date:** _____
Abdi Warsame, Executive Director

By: _____ **Date:** _____
Lisa R. Griebel, General Counsel
(As to Form and Execution)

General Conditions for Construction Contracts - Public Housing Programs

U.S. Department of Housing and Urban
Development
Office of Public and Indian Housing
OMB Approval No. 2577-0157 (exp. 11/30/2023)

**Applicability. This form is applicable to any
construction/development contract greater than \$250,000.**

Public reporting burden for this collection of information is estimated to average 1.0 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. Comments regarding the accuracy of this burden estimate and any suggestions for reducing this burden can be sent to the Reports Management Officer, Office of Policy Development and Research, REE, Department of Housing and Urban Development, 451 7th St SW, Room 4176, Washington, DC 20410-5000. When providing comments, please refer to OMB Approval No. 2577-0157. This form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 2 CFR 200, and those requirements set forth in Section 3 of the Housing and Urban Development Act of 1968 and its amendment by the Housing and Community Development Act of 1992, implemented by HUD at 24 CFR Part 75. The form is required for construction contracts awarded by Public Housing Agencies (PHAs). The form is used by Housing Authorities in solicitations to provide necessary contract clauses. If the form were not used, PHAs 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. HUD may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB number.

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1. Definitions

- (a) "Architect" means the person or other entity engaged by the PHA to perform architectural, engineering, design, and other services related to the work as provided for in the contract. When a PHA uses an engineer to act in this capacity, the terms "architect" and "engineer" shall be synonymous. The Architect shall serve as a technical representative of the Contracting Officer. The Architect's authority is as set forth elsewhere in this contract.
- (b) "Contract" means the contract entered into between the PHA and the Contractor. It includes the forms of Bid, the Bid Bond, the Performance and Payment Bond or Bonds or other assurance of completion, the Certifications, Representations, and Other Statements of Bidders (form HUD-5370), these General Conditions of the Contract for Construction (form HUD-5370), the applicable wage rate determinations from the U.S. Department of Labor, any special conditions included elsewhere in the contract, the specifications, and drawings. It includes all formal changes to any of those documents by addendum, change order, or other modification.
- (c) "Contracting Officer" means the person delegated the authority by the PHA to enter into, administer, and/or terminate this contract and designated as such in writing to the Contractor. The term includes any successor Contracting Officer and any duly authorized representative of the Contracting Officer also designated in writing. The Contracting Officer shall be deemed the authorized agent of the PHA in all dealings with the Contractor.
- (d) "Contractor" means the person or other entity entering into the contract with the PHA to perform all of the work required under the contract.
- (e) "Drawings" means the drawings enumerated in the schedule of drawings contained in the Specifications and as described in the contract clause entitled Specifications and Drawings for Construction herein.
- (f) "HUD" means the United States of America acting through the Department of Housing and Urban Development including the Secretary, or any other person designated to act on its behalf. HUD has agreed, subject to the provisions of an Annual Contributions Terms and Conditions (ACC), to provide financial assistance to the PHA, which includes assistance in financing the work to be performed under this contract. As defined elsewhere in these General Conditions or the contract documents, the determination of HUD may be required to authorize changes in the work or for release of funds to the PHA for payment to the Contractor. Notwithstanding HUD's role, nothing in this contract shall be construed to create any contractual relationship between the Contractor and HUD.
- (g) "Project" means the entire project, whether construction or rehabilitation, the work for which is provided for in whole or in part under this contract.
- (h) "PHA" means the Public Housing Agency organized under applicable state laws which is a party to this contract.
- (j) "Specifications" means the written description of the technical requirements for construction and includes the criteria and tests for determining whether the requirements are met.
- (l) "Work" means materials, workmanship, and manufacture and fabrication of components.

2. Contractor's Responsibility for Work

- (a) The Contractor shall furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the work. The Contractor shall also furnish all necessary water, heat, light, and power not made available to the Contractor by the PHA pursuant to the clause entitled Availability and Use of Utility Services herein.
- (b) The Contractor shall perform on the site, and with its own organization, work equivalent to at least [] (12 percent unless otherwise indicated) of the total amount of work to be performed under the order. This percentage may be reduced by a supplemental agreement to this order if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the PHA.
- (c) At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.
- (d) The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall hold and save the PHA, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.
- (e) The Contractor shall lay out the work from base lines and bench marks indicated on the drawings and be responsible for all lines, levels, and measurements of all work executed under the contract. The Contractor shall verify the figures before laying out the work and will be held responsible for any error resulting from its failure to do so.
- (f) The Contractor shall confine all operations (including storage of materials) on PHA premises to areas authorized or approved by the Contracting Officer.
- (g) The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. After completing the work and before final inspection, the Contractor shall (1) remove from the premises all scaffolding, equipment, tools, and materials (including rejected materials) that are not the property of the PHA and all rubbish caused by its work; (2) leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer; (3) perform all specified tests; and, (4) deliver the installation in complete and operating condition.
- (h) The Contractor's responsibility will terminate when all work has been completed, the final inspection made, and the work accepted by the Contracting Officer. The Contractor will then be released from further obligation except as required by the warranties specified elsewhere in the contract.

3. Architect's Duties, Responsibilities, and Authority

- (a) The Architect for this contract, and any successor, shall be designated in writing by the Contracting Officer.

- (b) The Architect shall serve as the Contracting Officer's technical representative with respect to architectural, **Schedule** engineering, and design matters related to the work performed under the contract. The Architect may provide direction on contract performance. Such direction shall be within the scope of the contract and may not be of a nature which: (1) institutes additional work outside the scope of the contract; (2) constitutes a change as defined in the Changes clause herein; (3) causes an increase or decrease in the cost of the contract; (4) alters the Construction Progress Schedule; or (5) changes any of the other express terms or conditions of the contract.
- (c) The Architect's duties and responsibilities may include but shall not be limited to:
- (1) Making periodic visits to the work site, and on the basis of his/her on-site inspections, issuing written reports to the PHA which shall include all observed deficiencies. The Architect shall file a copy of the report with the Contractor's designated representative at the site;
 - (2) Making modifications in drawings and technical specifications and assisting the Contracting Officer in the preparation of change orders and other contract modifications for issuance by the Contracting Officer;
 - (3) Reviewing and making recommendations with respect to - (i) the Contractor's construction progress schedules; (ii) the Contractor's shop and detailed drawings; (iii) the machinery, mechanical and other equipment and materials or other articles proposed for use by the Contractor; and, (iv) the Contractor's price breakdown and progress payment estimates; and,
 - (4) Assisting in inspections, signing Certificates of Completion, and making recommendations with respect to acceptance of work completed under the contract.

4. Other Contracts

The PHA may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with PHA 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 by PHA employees

Construction Requirements

5. Pre-construction Conference and Notice to Proceed

of the work, and that it has investigated and satisfied itself

- (a) Within ten calendar days of contract execution, and prior to the commencement of work, the Contractor shall attend a preconstruction conference with representatives of the PHA, its Architect, and other interested parties convened by the PHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract. The PHA will provide the Contractor with the date, time, and place of the conference.
- (b) The contractor shall begin work upon receipt of a written Notice to Proceed from the Contracting Officer or designee. The Contractor shall not begin work prior to receiving such notice.

6. Construction Progress

- (a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring labor, materials, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments or take other remedies under the contract until the Contractor submits the required schedule.
- (b) The Contractor shall enter the actual progress on the chart as required by the Contracting Officer, and immediately deliver three copies of the annotated schedule to the Contracting Officer. If the Contracting Officer determines, upon the basis of inspection conducted pursuant to the clause entitled Inspection and Acceptance of Construction, herein that the Contractor is not meeting the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the PHA. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.
- (c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the Default clause of this contract.

7. Site Investigation and Conditions Affecting the Work

- (a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location as to the general and local conditions which can affect the work or its cost, including but not limited to, (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is

reasonably ascertainable from an inspection of the site, including all exploratory work done by the PHA, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the PHA.

- (b) The PHA assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the PHA. Nor does the PHA assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

8. Differing Site Conditions

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site(s), of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. Work shall not proceed at the affected site, except at the

Contractor's risk, until the Contracting Officer has provided written instructions to the Contractor. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, the Contractor shall file a claim in writing to the PHA within ten days after receipt of such instructions and, in any event, before proceeding with the work. An equitable adjustment in the contract price, the delivery schedule, or both shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

9. Specifications and Drawings for Construction

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be

promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by", or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown" "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place" that is "furnished and installed".

(d) "Shop drawings" means drawings, submitted to the PHA by the Contractor, subcontractor, or any lower tier subcontractor, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The PHA may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with other contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the PHA's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Architect approves any such variation and the Contracting Officer concurs, the Contracting Officer shall issue an appropriate modification to the contract, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) It shall be the responsibility of the Contractor to make timely requests of the PHA for such large scale and full size drawings, color schemes, and other additional information, not already in his possession, which shall be

required in the planning and production of the work. Such requests may be submitted as the need arises, but each such request shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay.

- (h) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the PHA and one set will be returned to the Contractor. As required by the Contracting Officer, the Contractor, upon completing the work under this contract, shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the work is completed and accepted.
- (i) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all shop drawings prepared by subcontractors are submitted to the Contracting Officer.

10. As-Built Drawings

- (a) "As-built drawings," as used in this clause, means drawings submitted by the Contractor or subcontractor at any tier to show the construction of a particular structure or work as actually completed under the contract. "As-built drawings" shall be synonymous with "Record drawings."
- (b) As required by the Contracting Officer, the Contractor shall provide the Contracting Officer accurate information to be used in the preparation of permanent as-built drawings. For this purpose, the Contractor shall record on one set of contract drawings all changes from the installations originally indicated, and record final locations of underground lines by depth from finish grade and by accurate horizontal offset distances to permanent surface improvements such as buildings, curbs, or edges of walks.
- (c) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all as-built drawings prepared by subcontractors are submitted to the Contracting Officer.

11. Material and Workmanship

- (a) All equipment, material, and articles furnished under this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the contract to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of, and as approved by the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.
- (b) Approval of equipment and materials.
- (1) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the

machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

- (2) When required by the specifications or the Contracting Officer, the Contractor shall submit appropriately marked samples (and certificates related to them) for approval at the Contractor's expense, with all shipping charges prepaid. The Contractor shall label, or otherwise properly mark on the container, the material or product represented, its place of origin, the name of the producer, the Contractor's name, and the identification of the construction project for which the material or product is intended to be used.
- (3) Certificates shall be submitted in triplicate, describing each sample submitted for approval and certifying that the material, equipment or accessory complies with contract requirements. The certificates shall include the name and brand of the product, name of manufacturer, and the location where produced.
- (4) Approval of a sample shall not constitute a waiver of the PHA right to demand full compliance with contract requirements. Materials, equipment and accessories may be rejected for cause even though samples have been approved.
- (5) Wherever materials are required to comply with recognized standards or specifications, such specifications shall be accepted as establishing the technical qualities and testing methods, but shall not govern the number of tests required to be made nor modify other contract requirements. The Contracting Officer may require laboratory test reports on items submitted for approval or may approve materials on the basis of data submitted in certificates with samples. Check tests will be made on materials delivered for use only as frequently as the Contracting Officer determines necessary to insure compliance of materials with the specifications. The Contractor will assume all costs of retesting materials which fail to meet contract requirements and/or testing materials offered in substitution for those found deficient.
- (6) After approval, samples will be kept in the Project office until completion of work. They may be built into the work after a substantial quantity of the materials they represent has been built in and accepted.
- (c) Requirements concerning lead-based paint. The Contractor shall comply with the requirements concerning lead-based paint contained in the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) as implemented by 24 CFR Part 35.

12. Permits and Codes

- (a) The Contractor shall give all notices and comply with all applicable laws, ordinances, codes, rules and regulations. Notwithstanding the requirement of the Contractor to comply with the drawings and specifications in the contract, all work installed shall comply with all applicable codes and regulations as amended by any

waivers. Before installing the work, the Contractor shall examine the drawings and the specifications for compliance with applicable codes and regulations bearing on the work and shall immediately report any discrepancy it may discover to the Contracting Officer.

Where the requirements of the drawings and specifications fail to comply with the applicable code or regulation, the Contracting Officer shall modify the contract by change order pursuant to the clause entitled Changes herein to conform to the code or regulation.

- (b) The Contractor shall secure and pay for all permits, fees, and licenses necessary for the proper execution and completion of the work. Where the PHA can arrange for the issuance of all or part of these permits, fees and licenses, without cost to the Contractor, the contract amount shall be reduced accordingly.

13. Health, Safety, and Accident Prevention

(a) In performing this contract, the Contractor shall:

- (1) Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation;
- (2) Protect the lives, health, and safety of other persons;
- (3) Prevent damage to property, materials, supplies, and equipment; and,
- (4) Avoid work interruptions.

(b) For these purposes, the Contractor shall:

- (1) Comply with regulations and standards issued by the Secretary of Labor at 29 CFR Part 1926. Failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96), 40 U.S.C. 3701 et seq.; and
- (2) Include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.

(c) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 CFR Part 1904.

(d) The Contracting Officer shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

(e) The Contractor shall be responsible for its subcontractors' compliance with the provisions of this clause. The Contractor shall take such action with respect to any subcontract as the PHA, the Secretary of Housing and Urban Development, or the Secretary of Labor shall direct as a means of enforcing such provisions.

14. Temporary Heating

The Contractor shall provide and pay for temporary heating, covering, and enclosures necessary to properly protect all work and materials against damage by dampness and cold, to dry out the work, and to facilitate the completion of the work. Any permanent heating equipment used shall be turned over to the PHA in the condition and at the time required by the specifications.

15. Availability and Use of Utility Services

(a) The PHA shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the PHA or, where the utility is produced by the PHA, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the PHA, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

16. Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed under this contract, and which do not unreasonably interfere with the work required under this contract.

(b) The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance of this contract, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(c) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. Prior to disturbing the ground at the construction site, the Contractor shall ensure that all underground utility lines are clearly marked.

(d) The Contractor shall shore up, brace, underpin, secure, and protect as necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected by the excavations or other operations connected with the construction of the project.

(e) Any equipment temporarily removed as a result of work under this contract shall be protected, cleaned, and replaced in the same condition as at the time of award of this contract.

- (f) New work which connects to existing work shall correspond in all respects with that to which it connects and/or be similar to existing work unless otherwise required by the specifications.
- (g) No structural members shall be altered or in any way weakened without the written authorization of the Contracting Officer, unless such work is clearly specified in the plans or specifications.
- (h) If the removal of the existing work exposes discolored or unfinished surfaces, or work out of alignment, such surfaces shall be refinished, or the material replaced as necessary to make the continuous work uniform and harmonious. This, however, shall not be construed to require the refinishing or reconstruction of dissimilar finishes previously exposed, or finished surfaces in good condition, but in different planes or on different levels **Construction** when brought together by the removal of intervening work, unless such refinishing or reconstruction is specified in the plans or specifications.
- (i) The Contractor shall give all required notices to any adjoining or adjacent property owner or other party before the commencement of any work.
- (j) The Contractor shall indemnify and save harmless the PHA from any damages on account of settlement or the loss of lateral support of adjoining property, any damages from changes in topography affecting drainage, and from all loss or expense and all damages for which the PHA may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.
- (k) The Contractor shall repair any damage to vegetation, structures, equipment, utilities, or improvements, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

17. Temporary Buildings and Transportation of Materials

- (a) Temporary buildings (e.g., storage sheds, shops, offices, sanitary facilities) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the PHA. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.
- (b) The Contractor shall, as directed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

18. Clean Air and Water

The contractor shall comply with the Clean Air Act, as amended, 42 USC 7401 et seq., the Federal Water Pollution Control Water Act, as amended, 33 U.S.C. 1251 et seq., and standards issued pursuant thereto in the facilities in which this contract is to be performed.

19. Energy Efficiency

The Contractor shall comply with 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 the contract is performed.

20. Inspection and Acceptance of

- (a) Definitions. As used in this clause -
- (1) "Acceptance" means the act of an authorized representative of the PHA by which the PHA approves and assumes ownership of the work performed under this contract. Acceptance may be partial or complete.
- (2) "Inspection" means examining and testing the work performed under the contract (including, when appropriate, raw materials, equipment, components, and intermediate assemblies) to determine whether it conforms to contract requirements.
- (3) "Testing" means that element of inspection that determines the properties or elements, including functional operation of materials, equipment, or their components, by the application of established scientific principles and procedures.
- (b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. All work is subject to PHA inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.
- (c) PHA inspections and tests are for the sole benefit of the PHA and do not: (1) relieve the Contractor of responsibility for providing adequate quality control measures; (2) relieve the Contractor of responsibility for loss or damage of the material before acceptance; (3) constitute or imply acceptance; or, (4) affect the continuing rights of the PHA after acceptance of the completed work under paragraph (j) below.
- (d) The presence or absence of the PHA inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specifications without the Contracting Officer's written authorization. All instructions and approvals with respect to the work shall be given to the Contractor by the Contracting Officer.
- (e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The PHA may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The PHA shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

- (f) The PHA may conduct routine inspections of the construction site on a daily basis.
- (g) The Contractor shall, without charge, replace or correct work found by the PHA not to conform to contract requirements, unless the PHA decides that it is in its interest to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.
- (h) If the Contractor does not promptly replace or correct rejected work, the PHA may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor, or (2) terminate for default the Contractor's right to proceed.
- (i) If any work requiring inspection is covered up without approval of the PHA, it must, if requested by the Contracting Officer, be uncovered at the expense of the Contractor. If at any time before final acceptance of the entire work, the **Construction PHA** considers it necessary or advisable, to examine work already completed by removing or tearing it out, the Contractor, shall on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray all the expenses of the examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the Contracting Officer shall make an equitable adjustment to cover the cost of the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- (j) The Contractor shall notify the Contracting Officer, in writing, as to the date when in its opinion all or a designated portion of the work will be substantially completed and ready for inspection. If the Architect determines that the state of preparedness is as represented, the PHA will promptly arrange for the inspection. Unless otherwise specified in the contract, the PHA shall accept, as soon as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines and designates can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the PHA's right under any warranty or guarantee.

21. Use and Possession Prior to Completion

- (a) The PHA shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the PHA intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The PHA's possession or use shall not be deemed an acceptance of any work under the contract.
- (b) While the PHA has such possession or use, the Contractor shall be relieved of the responsibility for (1) the loss of or damage to the work resulting from the PHA's possession or use, notwithstanding the terms of the clause entitled Permits and Codes herein; (2) all maintenance costs on the areas occupied; and, (3) furnishing heat, light, power, and water used in the areas

occupied without proper remuneration therefore. If prior possession or use by the PHA delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

22. Warranty of Title

The Contractor warrants good title to all materials, supplies, and equipment incorporated in the work and agrees to deliver the premises together with all improvements thereon free from any claims, liens or charges, and agrees further that neither it nor any other person, firm or corporation shall have any right to a lien upon the premises or anything appurtenant thereto.

23. Warranty of

- (a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any subcontractor or supplier at any tier. This warranty shall continue for a period of _____ (one year unless otherwise indicated) from the date of final acceptance of the work. If the PHA takes possession of any part of the work before final acceptance, this warranty shall continue for a period of (one year unless otherwise indicated) from the date that the PHA takes possession.
- (b) The Contractor shall remedy, at the Contractor's expense, any failure to conform, or any defect. In addition, the Contractor shall remedy, at the Contractor's expense, any damage to PHA-owned or controlled real or personal property when the damage is the result of—
 - (1) The Contractor's failure to conform to contract requirements; or
 - (2) Any defects of equipment, material, workmanship or design furnished by the Contractor.
- (c) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for (one year unless otherwise indicated) from the date of repair or replacement.
- (d) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect or damage.
- (e) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the PHA shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- (f) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall:
 - (1) Obtain all warranties that would be given in normal commercial practice;
 - (2) Require all warranties to be executed in writing, for the benefit of the PHA; and,
 - (3) Enforce all warranties for the benefit of the PHA.
- (g) In the event the Contractor's warranty under paragraph (a) of this clause has expired, the PHA may bring suit at its own expense to enforce a subcontractor's, manufacturer's or supplier's warranty.

- (h) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defect of material or design furnished by the PHA nor for the repair of any damage that results from any defect in PHA furnished material or design.
- (i) Notwithstanding any provisions herein to the contrary, the establishment of the time periods in paragraphs (a) and (c) above relate only to the specific obligation of the Contractor to correct the work, and have no relationship to the time within which its obligation to comply with the contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligation other than specifically to correct the work.
- (j) This warranty shall not limit the PHA's rights under the Inspection and Acceptance of Construction clause of this contract with respect to latent defects, gross mistakes or fraud.

24. Prohibition Against Liens

The Contractor is prohibited from placing a lien on the PHA's property. This prohibition shall apply to all subcontractors at any tier and all materials suppliers.

Administrative Requirements

25. Contract Period

this contract within _____ calendar days of the effective date of the contract, or within the time schedule established in the notice to proceed issued by the Contracting Officer.

26. Order of Provisions

accordance with the terms and conditions of the

In the event of a conflict between these General Conditions and the Specifications, the General Conditions shall prevail. In the event of a conflict between the contract and any applicable state or local law or regulation, the state or local law or regulation shall prevail; provided that such state or local law or regulation does not conflict with, or is less restrictive than applicable federal law, regulation, or Executive Order. In the event of such a conflict, applicable federal law, regulation, and Executive Order shall prevail.

27. Payments

- (a) The PHA shall pay the Contractor the price as provided in this contract.
- (b) The PHA shall make progress payments approximately every 30 days as the work proceeds, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. The PHA may, subject to written determination and approval of the Contracting Officer, make more frequent payments to contractors which are qualified small businesses.
- (c) Before the first progress payment under this contract, the Contractor shall furnish, in such detail as requested by the Contracting Officer, a breakdown of the total contract price showing the amount included therein for each principal category of the work, which shall substantiate the payment amount requested in order to provide a

basis for determining progress payments. The breakdown shall be approved by the Contracting Officer and must be acceptable to HUD. If the contract covers more than one project, the Contractor shall furnish a separate breakdown for each. The values and quantities employed in making up this breakdown are for determining the amount of progress payments and shall not be construed as a basis for additions to or deductions from the contract price. The Contractor shall prorate its overhead and profit over the construction period of the contract.

- (d) The Contractor shall submit, on forms provided by the PHA, periodic estimates showing the value of the work performed during each period based upon the approved submitted not later than _____ days in advance of the date set for payment and are subject to correction and revision as required. The estimates must be approved by the Contracting Officer with the concurrence of the Architect prior to payment. If the contract covers more than one project, the Contractor shall furnish a separate progress payment estimate for each.
- (e) Along with each request for progress payments and the required estimates, the Contractor shall furnish the following certification, or payment shall not be made: I hereby certify, to the best of my knowledge and belief, that:

- (1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;
- (2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements; and,
- (3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in subcontract.

Name:

Title:

Date:

- (f) Except as otherwise provided in State law, the PHA shall retain ten (10) percent of the amount of progress payments until completion and acceptance of all work under the contract; except, that if upon completion of 50 percent of the work, the Contracting Officer, after consulting with the Architect, determines that the Contractor's performance and progress are satisfactory, the PHA may make the remaining payments in full for the work subsequently completed. If the Contracting Officer subsequently determines that the Contractor's performance and progress are unsatisfactory, the PHA shall reinstate the ten (10) percent (or other percentage as provided in State law) retainage until such time as the Contracting Officer determines that performance and progress are satisfactory.
- (g) The Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration when computing progress payments.

Material delivered to the Contractor at locations other than the site may also be taken into consideration if the Contractor furnishes satisfactory evidence that (1) it has acquired title to such material; (2) the material is properly stored in a bonded warehouse, storage yard, or similar suitable place as may be approved by the Contracting Officer; (3) the material is insured to cover its full value; and (4) the material will be used to perform this contract. Before any progress payment which includes delivered material is made, the Contractor shall furnish such documentation as the Contracting Officer may require to assure the protection of the PHA's interest in such materials. The Contractor shall remain responsible for such stored material notwithstanding the transfer of title to the PHA.

- (h) All material and work covered by progress payments made shall, at the time of payment become the sole property of the PHA, but this shall not be construed as (1) relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or, (2) waiving the right of the PHA to require the fulfillment of all of the terms of the contract. In the event the work of the Contractor has been damaged by other contractors or persons other than employees of the PHA in the course of their employment, the Contractor shall restore such damaged work without cost to the PHA and to seek redress for its damage only from those who directly caused it.
- (i) The PHA shall make the final payment due the Contractor under this contract after (1) completion and final acceptance of all work; and (2) presentation of release of all claims against the PHA arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. Each such exception shall embrace no more than one claim, the basis and scope of which shall be clearly defined. The amounts for such excepted claims shall not be included in the request for final payment. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned.
- (j) Prior to making any payment, the Contracting Officer may require the Contractor to furnish receipts or other evidence of payment from all persons performing work and supplying material to the Contractor, if the Contracting Officer determines such evidence is necessary to substantiate claimed costs.
- (k) The PHA shall not; (1) determine or adjust any claims for payment or disputes arising there under between the Contractor and its subcontractors or material suppliers; or, (2) withhold any moneys for the protection of the subcontractors or material suppliers. The failure or refusal of the PHA to withhold moneys from the Contractor shall in nowise impair the obligations of any surety or sureties under any bonds furnished under this contract.

28. Contract Modifications

- (a) Only the Contracting Officer has authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing.
- (b) The Contracting Officer may modify the contract unilaterally (1) pursuant to a specific authorization stated in a contract clause (e.g., Changes); or (2) for administrative matters which do not change the rights or

responsibilities of the parties (e.g., change in the PHA address). All other contract modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer.

- (c) When a proposed modification requires the approval of HUD prior to its issuance (e.g., a change order that exceeds the PHA's approved threshold), such modification shall not be effective until the required approval is received by the PHA.

29. Changes

- (a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract including changes:
 - (1) In the specifications (including drawings and designs);
 - (2) In the method or manner of performance of the work;
 - (3) PHA-furnished facilities, equipment, materials, services, or site; or,
 - (4) Directing the acceleration in the performance of the work.
- (b) Any other written order or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances and source of the order and (2) that the Contractor regards the order as a change order.
- (c) Except as provided in this clause, no order, statement or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.
- (d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days (5 days for oral orders) before the Contractor gives written notice as required. In the case of defective specifications for which the PHA is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.
- (e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause, or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting a written statement describing the general nature and the amount of the proposal. If the facts justify it, the Contracting Officer may extend the period for submission. The proposal may be included in the notice required under paragraph (b) above. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.
- (f) The Contractor's written proposal for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following details:

- (1) Direct Costs. Materials (list individual items, the quantity and unit cost of each, and the aggregate cost); Transportation and delivery costs associated with materials; Labor breakdowns by hours or unit costs (identified with specific work to be performed); Construction equipment exclusively necessary for the change; Costs of preparation and/ or revision to shop drawings resulting from the change; Worker's Compensation and Public Liability Insurance; Employment taxes under FICA and FUTA; and, Bond Costs when size of change warrants revision.
- (2) Indirect Costs. Indirect costs may include overhead, general and administrative expenses, and fringe benefits not normally treated as direct costs.
- (3) Profit. The amount of profit shall be negotiated and may vary according to the nature, extent, and complexity of the work required by the change. The allowability of the direct and indirect costs shall be determined in accordance with the Contract Cost Principles and Procedures for Commercial Firms in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31), as implemented by HUD Handbook 2210.18, in effect on the date of this contract. The Contractor shall not be allowed a profit on the profit received by any subcontractor. Equitable adjustments for deleted work shall include a credit for profit and may include a credit for indirect costs. On proposals covering both increases and decreases in the amount of the contract, the application of indirect costs and profit shall be on the net-change in direct costs for the Contractor or subcontractor performing the work.
- (g) The Contractor shall include in the proposal its request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the contract in its entirety.
- (h) The Contracting Officer shall act on proposals within 30 days after their receipt, or notify the Contractor of the date when such action will be taken.
- (i) Failure to reach an agreement on any proposal shall be a dispute under the clause entitled Disputes herein. Nothing in this clause, however, shall excuse the Contractor from proceeding with the contract as changed.
- (j) Except in an emergency endangering life or property, no change shall be made by the Contractor without a prior order from the Contracting Officer.

30. Suspension of Work

- (a) The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the PHA.
- (b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified (or within a reasonable time if not specified) in this contract an adjustment shall be made for any increase in the cost of performance of the contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have

- been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or for which any equitable adjustment is provided for or excluded under any other provision of this contract.
- (c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and, (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

31. Disputes

- (a) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under the contract, unlike a claim relating to the contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by complying with the requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- (b) Except for disputes arising under the clauses entitled Labor Standards - Davis Bacon and Related Acts, herein, all disputes arising under or relating to this contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.
- (c) All claims by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the PHA against the Contractor shall be subject to a written decision by the Contracting Officer.
- (d) The Contracting Officer shall, within 60 (unless otherwise indicated) days after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made.
- (e) The Contracting Officer's decision shall be final unless the Contractor (1) appeals in writing to a higher level in the PHA in accordance with the PHA's policy and procedures, (2) refers the appeal to an independent mediator or arbitrator, or (3) files suit in a court of competent jurisdiction. Such appeal must be made within (30 unless otherwise indicated) days after receipt of the Contracting Officer's decision.
- (f) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

32. Default

- (a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with the diligence that will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within this time, the Contracting Officer may, by written notice to the Contractor, terminate the right to

proceed with the work (or separable part of the work) that has been delayed. In this event, the PHA may take over the work and complete it, by contract or otherwise, and may take possession of and use any materials, equipment, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the PHA resulting from the **Convenience** Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the PHA in completing the work.

- (b) The Contractor's right to proceed shall not be terminated or the Contractor charged with damages under this clause if—
- (1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God, or of the public enemy, (ii) acts of the PHA or other governmental entity in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the PHA, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and
 - (2) The Contractor, within days (10 days unless otherwise indicated) from the beginning of such delay (unless extended by the Contracting Officer) notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, time for completing the work shall be extended by written modification to the contract. The findings of the Contracting Officer shall be reduced to a written decision which shall be subject to the provisions of the Disputes clause of this contract.
- (c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been for convenience of the PHA.

33. Liquidated Damages

- (a) If the Contractor fails to complete the work within the time specified in the contract, or any extension, as specified in the clause entitled Default of this contract, the Contractor shall pay to the PHA as liquidated damages, the sum of \$ _____ [Contracting Officer insert amount] for each day of delay. If different completion dates are specified in the contract for separate parts or stages of the work, the amount of liquidated damages shall be assessed on those parts or stages which are delayed. To the extent that the Contractor's delay or nonperformance is excused under another clause in this contract, liquidated damages shall not be due the PHA. The Contractor remains liable for damages caused other than by delay.
- (b) If the PHA terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final

completion of the work together with any increased costs occasioned the PHA in completing the work.

- (c) If the PHA does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

34. Termination for

- (a) The Contracting Officer may terminate this contract in whole, or in part, whenever the Contracting Officer determines that such termination is in the best interest of the PHA. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which the performance of the work under the contract is terminated, and the date upon which such termination becomes effective.
- (b) If the performance of the work is terminated, either in whole or in part, the PHA shall be liable to the Contractor for reasonable and proper costs resulting from such termination upon the receipt by the PHA of a properly presented claim setting out in detail: (1) the total cost of the work performed to date of termination less the total amount of contract payments made to the Contractor; (2) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, payment for which has not been made by the PHA to the Contractor or by the Contractor to the subcontractor or supplier; (3) the cost of preserving and protecting the work already performed until the PHA or assignee takes possession thereof or assumes responsibility therefore; (4) the actual or estimated cost of legal and accounting services reasonably necessary to prepare and present the termination claim to the PHA; and (5) an amount constituting a reasonable profit on the value of the work performed by the Contractor.
- (c) The Contracting Officer will act on the Contractor's claim within days (60 days unless otherwise indicated) of receipt of the Contractor's claim.
- (d) Any disputes with regard to this clause are expressly made subject to the provisions of the Disputes clause of this contract.

35. 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 PHA under the contract may be assigned to a bank, trust company, or other financial institution. Such assignments of claims shall only be made with the written concurrence of the Contracting Officer. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership as approved by the Contracting Officer.

36. Insurance

- (a) Before commencing work, the Contractor and each subcontractor shall furnish the PHA with certificates of insurance showing the following insurance is in force and will insure all operations under the Contract:
 - (1) Workers' Compensation, in accordance with state or Territorial Workers' Compensation laws.
 - (2) Commercial General Liability with a combined single limit for bodily injury and property damage of not less than \$ _____ [Contracting Officer insert amount]

per occurrence to protect the Contractor and each subcontractor against claims for bodily injury or death and damage to the property of others. This shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under (3) below. If the Contractor has a "claims made" policy, then the following additional requirements apply: the policy must provide a "retroactive date" which must be on or before the execution date of the Contract; and the extended reporting period may not be less than five years following the completion date of the Contract.

- (3) Automobile Liability on owned and non-owned motor vehicles used on the site(s) or in connection therewith for a combined single limit for bodily injury and property damage of not less than \$ _____

[Contracting Officer insert amount] per occurrence.

- (b) Before commencing work, the Contractor shall furnish the PHA with a certificate of insurance evidencing that Builder's Risk (fire and extended coverage) Insurance on all work in place and/or materials stored at the building site(s), including foundations and building equipment, is in force. The Builder's Risk Insurance shall be for the benefit of the Contractor and the PHA as their interests may appear and each shall be named in the policy or policies as an insured. The Contractor in installing equipment supplied by the PHA shall carry insurance on such equipment from the time the Contractor takes possession thereof until the Contract work is accepted by the PHA. The Builder's Risk Insurance need not be carried on excavations, piers, footings, or foundations until such time as work on the superstructure is started. It need not be carried on landscape work. Policies shall furnish coverage at all times for the full cash value of all completed construction, as well as materials in place and/or stored at the site(s), whether or not partial payment has been made by the PHA. The Contractor may terminate this insurance on buildings as of the date taken over for occupancy by the PHA. The Contractor is not required to carry Builder's Risk Insurance for modernization work which does not involve structural alterations or additions and where the PHA's existing fire and extended coverage policy can be endorsed to include such work.
- (c) All insurance shall be carried with companies which are financially responsible and admitted to do business in the State in which the project is located. If any such insurance is due to expire during the construction period, the Contractor (including subcontractors, as applicable) shall not permit the coverage to lapse and shall furnish evidence of coverage to the Contracting Officer. All certificates of insurance, as evidence of coverage, shall provide that no coverage may be canceled or non-renewed by the insurance company until at least 30 days prior written notice has been given to the Contracting Officer.

37. Subcontracts

- (a) Definitions. As used in this contract -
- (1) "Subcontract" means any contract, purchase order, or other purchase agreement, including modifications and change orders to the foregoing, entered into by a subcontractor to furnish supplies, materials, equipment, and services for the performance of the prime contract or a subcontract.

- (2) "Subcontractor" means any supplier, vendor, or firm that furnishes supplies, materials, equipment, or services to or for the Contractor or another subcontractor.
- (b) The Contractor shall not enter into any subcontract with any subcontractor who has been temporarily denied participation in a HUD program or who has been suspended or debarred from participating in contracting programs by any agency of the United States Government or of the state in which the work under this contract is to be performed.
- (c) The Contractor shall be as fully responsible for the acts or omissions of its subcontractors, and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Contractor.
- (d) The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this contract insofar as they are applicable to the work of subcontractors.
- (e) Nothing contained in this contract shall create any contractual relationship between any subcontractor and the PHA or between the subcontractor and HUD.

38. Subcontracting with Small and Minority Firms, Women's Business Enterprise, and Labor Surplus Area Firms

The Contractor shall take the following steps to ensure that, whenever possible, subcontracts are awarded to small business firms, minority firms, women's business enterprises, and labor surplus area firms:

- (a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (b) Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- (d) Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by small and minority businesses and women's business enterprises; and
- (e) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies.

39. Equal Employment Opportunity

During the performance of this contract, the Contractor/Seller agrees as follows:

- (a) The Contractor/Seller shall not discriminate against any employee or applicant for employment because of race color, religion, sex, sexual orientation, gender identity, disability, or national origin.
- (b) The Contractor/Seller 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, sexual orientation, gender identity, disability, or national origin. Such action shall include, but not be limited to, (1) employment, (2) upgrading 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/Seller agrees to post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(d) The Contractor/Seller shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor/Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(e) The Contractor/Seller 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/Seller shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(g) The Contractor/Seller shall furnish all information and reports required by Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor/Seller 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 that the Contractor/Seller is in noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor/seller may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(i) The contractor/seller will include the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub[contractor/seller] or vendor. The [contractor/seller] will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the [contractor/seller] becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the [contractor/seller] may request the United States to enter into such litigation to protect the interests of the United States.

(j) Compliance with the requirements of this clause shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act and the Indian Preference clause of this contract.

40. Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.

(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 75, 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 75 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 prioritization requirements and shall state the minimum percentages of labor hour requirements established in the Benchmark Notice (FR-6085-N-04).

(d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75, 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 75. 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 75.

(e) Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(f) Contracts, subcontracts, grants, or subgrants subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business opportunities to Indians and Indian organizations, and are therefore not subject to the requirements of 24 CFR Part 75.

41. Interest of Members of Congress

No member or delegate to the Congress of the United States of America shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

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

No member, officer, or employee of the PHA, no member of the governing body of the locality in which the project is situated, no member of the governing body of the locality in which the PHA 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.

43. Limitations on Payments made to Influence Certain Federal Financial Transactions

- (a) The Contractor agrees to comply with Section 1352 of Title 31, United States Code which prohibits the use of **Acts** Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and 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; or the modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) The Contractor further agrees to comply with the requirement of the Act to furnish a disclosure (OMB Standard Form LLL, Disclosure of Lobbying Activities) if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

44. Royalties and Patents

The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall save the PHA harmless from loss on account thereof; except that the PHA shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified and the Contractor has no reason to believe that the specified design, process, or product is an infringement. If, however, the Contractor has reason to believe that any design, process or product specified is an infringement of a patent, the Contractor shall promptly notify the Contracting Officer. Failure to give such notice shall make the Contractor responsible for resultant loss.

45. Examination and Retention of Contractor's Records

- (a) The PHA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.
- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
- (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to (1) appeals under the Disputes clause of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the PHA, 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.

46. Labor Standards - Davis-Bacon and Related

If the total amount of this contract exceeds \$2,000, the Federal labor standards set forth in the clause below shall apply to the development or construction work to be performed under the contract.

- (a) Minimum Wages.
 - (1) All laborers and mechanics employed under this contract in the development or construction of the project(s) involved will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the regular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). 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 classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) 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.

(2) (i) Any class of laborers or mechanics, including

helpers, 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 and fringe benefits therefor only when all the following criteria have been met: (A) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (B) The classification is utilized in the area by the construction industry; and (C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

- (ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employee Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.
- (iii) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.
- (iv) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (a)(2)(ii) or (iii) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in classification.
- (3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the

amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

- (b) Withholding of funds. HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working in the construction or development of the project, all or part of the wages required by the contract, 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 until such violations have ceased. HUD or its designee 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.
- (c) Payrolls and basic records.
- (1) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working in the construction or development of the project. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(2) (i) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1214-0149.)

(ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (A) That the payroll for the payroll period contains the information required to be maintained under paragraph (c) (1) of this clause and that such information is correct and complete;
 - (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and
 - (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by subparagraph (c)(2)(ii) of this clause.
- (iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(3) The Contractor or subcontractor shall make the records required under subparagraph (c)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them 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. Furthermore, failure to submit the required records upon request or to

make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

- (d) (1) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS, or if a person is employed in his or 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. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (2) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under

the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (3) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- (e) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.
- (f) Contract termination; debarment. A breach of this contract clause may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.
- (g) Compliance with Davis-Bacon and related Act requirements. All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (h) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this clause shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the PHA, HUD, the U.S. Department of Labor, or the employees or their representatives.
- (i) Certification of eligibility.
 - (1) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

- (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a United States Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (3) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.
- (j) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.
 - (1) 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, including watchmen and guards, shall require or permit any such laborer or mechanic in any workweek in which the individual 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.
 - (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in subparagraph (j)(1) of this clause, the Contractor and any 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 such 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 subparagraph (j)(1) of this clause, in the sum of \$27 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 subparagraph (j)(1) of this clause. DOL posts current fines at: <https://www.dol.gov/whd/govcontracts/cwhssa.htm#cmp>
 - (3) 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 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 subparagraph (j)(2) of this clause.
- (k) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause, and such other clauses as HUD or its designee may by appropriate instructions require, 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 these provisions.

47. Non-Federal Prevailing Wage Rates

(a) Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under State or tribal 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 exceeds:

(1) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141 et seq.) to be prevailing in the locality with respect to such trade;

(b) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor (DOL) or a DOL-recognized State Apprenticeship Agency; or

(c) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

48. 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.

() 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.

Certification of Payments to Influence Federal Transactions

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

Public reporting burden for this information collection is estimated to average 30 minutes. This includes the time for collecting, reviewing, and reporting data. The information requested is required to obtain a benefit. This form is used to ensure federal funds are not used to influence members of Congress. There are no assurances of confidentiality. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Applicant Name

Program/Activity Receiving Federal Grant Funding

The undersigned certifies, to the best of his or her knowledge and belief, that:

(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 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.

(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 undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official

Title

Signature

Date (mm/dd/yyyy)

MINNEAPOLIS PUBLIC HOUSING AUTHORITY
SAMPLE NOTICE TO PROCEED

1. Date of Issue: TBA	2. MPHA Project # B23023	3. MPHA Contract No. TBA
4. Pursuant to the terms of your contract dated: TBA		
5. Contractor:	6. For: Phase 11 Elevator Modernization	
	7. Project Address:	
	8. Contractors Start Date: TBA	
9. Contract Completion on or Before: TBA	10. Time for Contract Completion: TBA	
11. MPHA Contract Administrator: Steve Peterson Telephone Number: 612-403-3173		
12. The Contract Administrator is duly authorized to administer your contract for, and in the name of, the Minneapolis Public Housing Authority in and for the City of Minneapolis (MPHA).		
13. Enclosed is your executed copy of the Contract. If additional information is needed, notify the Contract Administrator.		
14. Acknowledge receipt of this Notice to Proceed by signing and dating below. Return promptly to: MINNEAPOLIS PUBLIC HOUSING AUTHORITY ATTN: Contracting Officer Procurement Department 1001 Washington Avenue North Minneapolis, MN 55401	15. NOTICE TO CONTRACTOR Contractor shall, on a weekly basis, submits WEEKLY Payroll utilizing LCP Tracker. MPHA will not make any payment under this Contract unless and until it has received certification from the Contractor that such Contractor and each of its subcontractors have made payment to each class of employees in compliance with the provisions of the General Conditions, Labor Standards, HUD Form 5370, as applicable.	
16. Accepted by authorized person <hr style="border: 0.5px solid black;"/> <div style="text-align: center;">(Signature)</div> <hr style="border: 0.5px solid black;"/> <div style="text-align: center;">(Title)</div> <hr style="border: 0.5px solid black;"/> <div style="text-align: center;">(Name of Firm)</div> <hr style="border: 0.5px solid black;"/> <div style="text-align: center;">(Date)</div>	17. Minneapolis Public Housing Authority <div style="text-align: center;">By CONTRACTING OFFICER</div> <div style="text-align: center;">Date</div>	

"General Decision Number: MN20230117 06/30/2023

Superseded General Decision Number: MN20220117

State: Minnesota

Construction Type: Building

County: Hennepin County in Minnesota.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$16.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2023.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$12.15 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2023.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/06/2023
1	04/14/2023

2 05/19/2023
 3 06/16/2023
 4 06/30/2023

ASBE0034-001 06/13/2022

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR.....	\$ 41.00	37.99

BOIL0647-008 04/01/2021

	Rates	Fringes
BOILERMAKER.....	\$ 40.94	28.44

BRMN0001-003 05/02/2022

	Rates	Fringes
BRICKLAYER.....	\$ 44.39	23.77

BRMN0001-018 05/02/2022

	Rates	Fringes
TERRAZZO FINISHER.....	\$ 42.67	22.04
TERRAZZO WORKER/SETTER.....	\$ 44.36	22.35
TILE FINISHER.....	\$ 33.24	22.08
TILE SETTER.....	\$ 40.47	26.49

CARP0068-006 05/02/2022

	Rates	Fringes
LATHER.....	\$ 41.51	27.32

CARP0068-010 05/02/2022

	Rates	Fringes
SOFT FLOOR LAYER.....	\$ 35.83	22.65

CARP0322-017 05/02/2022

	Rates	Fringes
CARPENTER (Including Acoustical Ceiling Installation, Batt and Foam Installation, Drywall Hanging, Hardwood Floor Laying, Form Work, and Metal Roofing, and Excluding Soft Floor Layer).....	\$ 41.51	27.32

CARP0548-003 05/01/2022

	Rates	Fringes
MILLWRIGHT.....	\$ 38.65	31.81

CARP1847-001 05/02/2022

	Rates	Fringes
PILEDRIVERMAN.....	\$ 41.14	27.05

 ELEC0292-006 05/01/2023

	Rates	Fringes
ELECTRICIAN		
Excludes Low Voltage Wiring.	\$ 52.00	25.50
Low Voltage Wiring Only.....	\$ 43.52	20.49

 ENGI0049-018 05/01/2020

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
Bobcat/Skid Steer/Skid		
Loader.....	\$ 40.93	21.70
Bulldozer.....	\$ 40.93	21.70
Drill.....	\$ 40.93	21.70
Forklift.....	\$ 40.93	21.70
Oiler.....	\$ 38.30	21.70
Roller.....	\$ 40.93	21.70
Tractor.....	\$ 40.93	21.70

 IRON0512-029 05/01/2022

	Rates	Fringes
IRONWORKER (Reinforcing and		
Structural).....	\$ 41.00	33.11

 LAB00563-058 05/01/2023

	Rates	Fringes
LABORER		
Asbestos Abatement Removal		
from Ceilings, Floors and		
Walls.....	\$ 37.63	23.36
Blaster, Demolition.....	\$ 39.81	22.59
Bottom Person.....	\$ 38.50	22.39
Common or General.....	\$ 35.98	23.42
Concrete Saw		
(Handheld/Walk Behind).....	\$ 39.81	22.59
Driller.....	\$ 39.81	22.59
Fireproofers.....	\$ 39.81	22.59
Landscape.....	\$ 26.89	19.31
Mason Tender-		
Brick/Cement/Concrete.....	\$ 39.81	22.59
Pipelayer.....	\$ 40.50	22.39
Plaster Tender.....	\$ 40.22	23.56
Scaffold Builder.....	\$ 39.81	22.59
Top Person.....	\$ 38.90	23.49

 PAIN0386-003 05/02/2022

	Rates	Fringes
DRYWALL FINISHER/TAPER.....	\$ 38.27	27.14

 PAIN0386-008 05/02/2022

Rates	Fringes
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PAINTER		
Brush & Roller.....	\$ 40.48	25.27
Spray.....	\$ 40.48	25.27

PAIN0880-002 06/01/2018

	Rates	Fringes
PAINTER (Sign Installer).....	\$ 29.05	14.77

* PAIN1324-001 06/05/2023

	Rates	Fringes
GLAZIER.....	\$ 46.73	25.40

PLAS0265-001 06/01/2018

	Rates	Fringes
PLASTERER.....	\$ 33.32	23.45

PLAS0633-005 05/01/2021

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 41.51	22.72

PLUM0015-026 05/01/2023

	Rates	Fringes
PLUMBER (Excludes HVAC Pipe and Unit Installation).....	\$ 52.98	30.72

PLUM0539-020 05/01/2022

	Rates	Fringes
PIPEFITTER (Includes HVAC Pipe and Unit Installation and Excludes HVAC Duct Installation).....	\$ 45.36	36.93

ROOF0096-018 05/01/2023

	Rates	Fringes
ROOFER.....	\$ 43.30	21.89

SFMN0417-001 06/01/2023

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....	\$ 51.26	34.10

SHEE0010-047 05/01/2023

	Rates	Fringes
SHEET METAL WORKER Excludes HVAC Duct Installation.....	\$ 46.65	33.14

HVAC Duct Installation Only.\$ 46.65 33.14

* UAVG-MN-0023 01/01/2023

	Rates	Fringes
OPERATOR: Crane.....	\$ 46.48	23.63
OPERATOR: Loader.....	\$ 41.29	23.53

SUMN2015-052 06/22/2018

	Rates	Fringes
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 31.13	14.94
TRUCK DRIVER: Dump Truck.....	\$ 23.43	12.33

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

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

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

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

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or

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

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

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

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

Union Average Rate Identifiers

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

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

WAGE DETERMINATION APPEALS PROCESS

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

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on

a wage determination matter
* a conformance (additional classification and rate) ruling

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

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

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

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

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

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

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

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

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

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END OF GENERAL DECISIO"



SECTION 3 COMPLIANCE REPORT FORM

(Public Housing Financial Assistance Programs)

REPORT DATE: _____

VENDOR NAME	PROJECT DESCRIPTION	MPHA CONTRACT NUMBER
Point of Contact / Title	Telephone	E-mail
Work /Project Start Date	Work/Project End Date	Notes

This form should be completed by all vendors, contractors and service providers who have worked with the Minneapolis Public Housing Authority that is subject to Section 3 requirements per 24 CFR Part 75 and/or MPHA’s Section 3 Policy and Compliance Plan. **Complete this form in its entirety, and attach the following supporting documentation: Section 3 Worker and Targeted Section 3 Worker Certification forms, payroll information supporting labor hour benchmark data, certification that you followed order of hiring priority, evidence of qualitative efforts made to comply with Section 3 and other supporting documents as applicable.**

You may attach a letter to this report if needed to further state your efforts, achievements or obstacles encountered.

Submit this form at completion of your work or by the 10th of each quarter (April, July, October, January) for work completed in the previous quarter, unless agreed otherwise with the Section 3 Compliance Administrator. Questions and assistance with requirements and reporting can be sent to LCreamer@mplspha.org

GENERAL GUIDANCE AND DEFINITIONS

Section 3 of the Housing and Urban Development Act of 1968 (codified at 12 U.S.C. 1701u and implemented at 24 CFR Part 75, hereinafter, "Section 3"), as amended, requires that economic opportunities, most importantly employment, generated by certain U.S. Department of Housing and Urban Development (“HUD”) financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, or residents of the community in which the Federal assistance is spent.

Section 3 Worker means;

Any worker who currently fits or when hired within the past five years fit at least one of the following categories, as documented:

1. The worker's income for the previous or annualized calendar year is below the income limit established by HUD. (Note: Income is considered for the worker only and not based on household)
2. The worker is employed by a Section 3 business concern.
3. The worker is a YouthBuild participant.

A Targeted Section 3 worker for public housing financial assistance means a Section 3 worker who is:

1. A worker employed by a Section 3 business concern; or
2. A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:
 - i. A resident of public housing or Section 8-assisted housing;
 - ii. A resident of other public housing projects or Section 8-assisted housing managed by the PHA that is providing the assistance; or
 - iii. A YouthBuild participant.

BENCHMARK GOALS

1. **25 percent** or more of the total number of labor hours worked by all workers on the project employed with public housing financial assistance in MPHA's fiscal year are **Section 3 Workers**; and
2. **5 percent** or more of the total number of labor hours worked by all workers on the project employed with public housing financial assistance in MPHA's fiscal year are **Targeted Section 3 Workers**.

HUD INCOME LIMITS

Low- and very low-income limits are defined in Section 3(b)(2) of the Housing Act of 1937 and are determined annually by HUD. These limits are typically established at 80 percent and 50 percent of the area median individual income. Most recent HUD income limits may be obtained from:

<https://www.huduser.gov/portal/datasets/il/il2022/2022summary.odn>

Income Eligibility Guideline: FY 2022 Minneapolis HUD Income Limits
Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area

Very Low (50%) Income Limit	No more than \$ 41,100 or
Low (80%) Income Limit	No more than \$ 62,600

Note: a Section 3 worker can be either a very low or low-income individual.

HIRING PRIORITIES

Employment and training opportunities created by **public housing financial assistance** shall be given to Section 3 Workers in the following order of priority:

- **P1:** To residents of the public housing projects for which the public housing financial assistance is expended;
- **P2:** To residents of other public housing projects managed by MPHA or for residents of Section 8-assisted housing managed by MPHA;
- **P3:** To participants in YouthBuild programs; and
- **P4:** To low- and very low-income persons residing within the metropolitan area in which the assistance is expended.

Part I: WORKFORCE COMPOSITION

Total Number of <u>All Workers</u> who worked on the Project	Total Number of <u>Section 3 Workers</u> who worked on the Project	Total Number of <u>Targeted Section 3 Workers</u> who worked on the Project

Part II: LABOR HOUR BENCHMARKS (25% and 5% goal)

Report labor hours worked on this project broken down by ALL Workers, Section 3 Workers and Targeted Section 3 Workers.

Labor Hours on the Project for <u>ALL Workers</u>	Labor Hours on the Project for <u>Section 3 Workers</u>	Labor Hours on the Project for <u>Targeted Section 3 Workers</u>

Attach documents supporting the data provided in this section and check the boxes below:

- LCP Tracker report certifying labor hours worked
- Other salary-based or time-and-attendance payroll records certifying labor hours

Part III: SUBCONTRACTORS

Did you have any subcontractors who performed work on this contract?

YES NO (If **yes**, complete the table below and attach this same report form for each of the subcontractors to identify their hiring and labor hours)

Subcontractor Name	Trade	Subcontract Amount	Start Date	End Date	Business Certification (MBE, WBE, SBE, Section 3)

Part IV: QUALITATIVE EFFORTS (24 CFR Part 75.15)

Check the boxes that apply to demonstrate your good faith efforts to satisfy your section 3 obligations.

- Engaged in outreach efforts to generate job applicants who are Targeted Section 3 Workers, including notifying MPHA’s Section 3 team, posting job openings at the job site, HUD Opportunity Portal, social media pages, contacting Resident Advisory Councils, and other platforms;
- Contacted agencies administering Minneapolis YouthBuild Programs, and requesting their assistance in recruiting Minneapolis YouthBuild Program participants for training opportunities and employment positions;
- Consulted with state and local agencies administering training programs, such as those funded through Workforce Investment Act, unemployment compensation programs, community organizations and other officials or organizations to assist with training and recruiting Section 3 Workers and TargetedSection 3 Workers;
- Held job fairs;
- Provided or connecting Section 3 Workers and Targeted Section 3 Workers with assistance in seeking employment, including: drafting resumes, preparing for interviews, and finding job opportunitiesconnecting residents to job placement services;
- Provided or referring Section 3 Workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, child care);
- Assisted Section 3 Workers to obtain financial literacy training and/or coaching;
- Engaged in outreach efforts to identify and secure bids from Section 3 Business Concerns.
- Provided technical assistance to help Section 3 Business Concerns understand and bid on contracts;Divided contracts into smaller jobs to facilitate participation by Section 3 Business
- Concerns; Provided bonding assistance, guaranties, or other efforts to support viable bids from Section 3 Business Concerns;
- Promoted use of Section 3 Business Registries designed to create opportunities for Section 3, disadvantaged and small businesses.

Part V: NOTES AND COMMENTS (If needed, attach additional sheets)

By signing below, I hereby certify and declare under penalty of perjury under the laws of the United States and the State of Minnesota that the information provided on this form, as well as all documentation provided in support thereof, are true and correct, and that I am authorized on behalf of the Company to make this certification. Furthermore, I certify that I will maintain this documentation for the time period required for record retentions in accordance with applicable program regulations or, in the absence of applicable program regulations, in accordance with 2 CFR part 200. I will make these records available to MPHA and/or HUD upon request.

Signature

Name and Title

Date

ADDITIONAL GUIDANCE FOR CONTRACTORS AND VENDORS

RECORDKEEPING: 24 CFR Part 75.31

Contractors, subcontractors and other recipients or sub-recipients must maintain documentation to ensure that workers meet the definition of a Section 3 Worker or Targeted Section 3 Worker as follows:

For a worker to qualify as a Section 3 worker, one of the following must be maintained:

1. A worker's self-certification that their income is below the income limit from the prior
2. calendar year;
3. A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing;
4. Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;
5. An employer's certification that the worker's income from that employer is below the income limit when based on an employer's calculation of what the worker's wage rate would translate to if annualized on a full-time basis; or
6. An employer's certification that the worker is employed by a Section 3 business concern.

For a worker to qualify as a Targeted Section 3 worker, under Public Housing Assistance Programs one of the following must be maintained:

1. A worker's self-certification of participation in public housing or Section 8-assisted housing programs;
2. Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;
3. An employer's certification that the worker is employed by a Section 3 business concern; or
4. A worker's certification that the worker is a YouthBuild participant.

OTHER

- A contractor/vendor may report on Section 3 workers and Targeted Section 3 workers for five years from when their certification as a Section 3 worker or Targeted Section 3 worker is established.
- Income limits are individual and not household.
- MPHA's Section 3 Worker Certification Form can be used to establish eligibility as a Section 3 Worker and Targeted Section 3 Worker.
- To calculate the labor hour benchmark, see the graphics below:



- See HUD's Section 3 Regulation codified at 24 CFR Part 75, Labor Hour Benchmarks and FAQ at <https://mphaaonline.org/careers/section-3/>
- Questions about MPHA's Section 3 program or completing this form can be directed to MPHA's Section 3 Coordinator at LCreamer@mplspha.org

MINNEAPOLIS PUBLIC HOUSING AUTHORITY
RIGHT TO KNOW INFORMATION FOR VENDORS (11/8/12)

1. Minneapolis Public Housing Authority (MPHA) has a Right-to-Know Program (Program) which is intended to comply with the Minnesota Occupational Safety and Health Administration (OSHA) and Employee Right-to-Know and Minn. Stat. Chapter 182.
2. The Program explains the roles and responsibilities of MPHA Staff and vendors, MPHA's labeling system, and how to obtain safety data sheets (SDS) and inventories of Hazmat.
3. The Program is on MPHA's website at: www.mphaonline.org From the home page select the menu item "About" and then select "Policies and Publications" and follow the prompts to the Right to Know Program.
4. The Hazmat inventory and SDSs sheets for a particular MPHA building may be found at:
 - a. the highrise Property Manager's office;
 - b. the Regional Property Manager's office at 2709 Essex;
 - c. Director of Heritage Park Senior Center's (HPSSC) office for HPSSC;
 - d. Facilities and Development's office for 1001 Washington; and
 - e. Assistant Director of Maintenance Operations' office for 1301 Bryant.
5. Vendors under any form of contract which includes a purchase order with MPHA shall inform any person performing work under the vendor's contract with MPHA and who may be routinely exposed to Hazmat:
 - a. on how to access MPHA's Hazmat inventory, SDSs, and this Program;
 - b. for each Hazmat the precautionary measures needed to protect those persons; and
 - c. about MPHA's labeling system which is described in the Program.
6. For the Hazmat which a vendor may use at a MPHA building and which an MPHA employee may be routinely exposed to, the vendor upon request by MPHA will provide:
 - a. copy of its Right to Know Program;
 - b. an inventory of the Hazmat to be used in the building and SDSs for each Hazmat;
 - c. the precautionary measures needed to protect those persons; and
 - d. vendor's labeling system.
7. If you have questions, contact Mary Boler at 612 342-1453 or mboler@mplspha.org.

MPHA Contract No. 23.xxx
State and Federal Data Privacy Statement

The undersigned vendor and a person performing services under Contract No. 23.xxx may have access to MPHA data that is classified private data under the Minnesota Government Data Practices Act, Minn. Stat. §13.01 et. al. and applicable federal law.

Data about tenants or program participants, including but not limited to their names, unit numbers and property addresses, except for highrise buildings, are benefit data and private. See Minn. Stat. §13.462. Vendor will ensure that persons who receive private data will protect the status of data. The unauthorized disclosure of private data is subject to civil and criminal penalties.

Vendor will ensure that persons who have access to private data will comply with state and federal law. No one shall obtain, access, view, disclose or reproduce the private data for any purpose except when needed to perform this contract.

Vendor will return to MPHA or confidentially destroy all copies of private data when no longer necessary to perform the contract.

Vendor will not disclose the private data to an Unauthorized Person. An Authorized Person is a person who accesses the private data without a work assignment that reasonably requires the data or regardless of work assignment for a purpose not authorized by Minn. Stat. § 13.05 subd. 5.

Vendor will prevent a Breach of Security. A Breach of Security means the unauthorized acquisition (as defined in Minn. Stat. § 13.055) of MPHA private data that compromises the security and classification of the data. If a Breach of Security occurs Vendor will comply with the notice and report procedures in Minn. Stat. § 13.055.

Date: _____

Print Name of Vendor

By: _____
Print Name

Its: _____
Print Title

Signature: _____



October 30, 2020

Re: Expanding Operations – Partners: Contractors, Vendors, and Consultants for The Minneapolis Public Housing Authority in and for the City of Minneapolis (MPHA)

MPHA's #1 priority is the safety and well-being of our employees, residents, participants and partners as we determine the expanding operations protocols necessary to accomplish ongoing activities. During this unprecedented time, we are requiring the following actions of our partners: contractors, vendors, and consultants etc. to support the safety of all. As you are aware, MPHA serves some of the City's most vulnerable populations. We are utilizing the CDC, OSHA, State of Minnesota, American Industrial Hygiene Association and other regulatory organizations' guidance to establish the requirements. Due to the uncertainty of the situation, MPHA may update these requirements based on the needs of the organization at any time. Partner deviations from the protocols established in this document must be approved in writing by MPHA prior to making a change. MPHA shall retain the right to request and receive a change in personnel assigned to the work, if partner's employee fails to comply with this document.

If you have a question regarding an area that is not covered in this document, please utilize the appropriate governmental or regulatory guidance.

Responsibilities of our partners:

- Enforce requirements with all sub-contractors.
- Ensure compliance by all of your employees.
- Communicate requirements and expectations to all employees including signing an acknowledgement of understanding. (Training if necessary)
- Provide required PPE.
- Provide appropriate PPE training with a signed acknowledgement of understanding.
- Provide appropriate action for non-compliance by their employee
- Support any employee that notifies them of safety concerns including potential exposure of COVID-19 without fear of retribution or termination.

Requirements

Screening Prior to Jobsite Admittance

All personnel that enters a jobsite must complete a health questionnaire (see attached sample from the State of Minnesota) and have their temperature taken on a daily basis. Please stay abreast of

symptoms that the CDC states are indicative of COVID-19 and screen for those symptoms. If the individual has any of the symptoms captured in the questionnaire and/or a fever, they will not be permitted onto the worksite. Potentially ill individuals must be separated from others that are in the area. You will need to maintain records that your employees complied with the daily pre-site health screening protocol prior to arrival at a MPHA facility. If requested, you will need to provide MPHA documentation that the protocol was followed and who was responsible to ensure it was.

Handling of positive COVID-19 case

If one of your employees, who has been at one of MPHA's facilities, tests positive for COVID-19 or is presumed positive for COVID-19, you must immediately notify your Contract Administrator at MPHA. You will need to identify potential MPHA staff and tenants that your employee may have contacted. The date and time that your employee was at our facility will also be needed. MPHA will use its notification protocol to inform employees, residents/participants and other partners of the potential exposure. MPHA in compliance with the ADA will not disclose the name or identity of the ill individual.

Return to work after identification and isolation of sick persons

An individual who has tested positive or is presumed positive for COVID-19 shall not return to the MPHA job site until after 10 days have passed since symptoms first appeared AND at least 24 hours with no fever without fever-reducing medication AND other symptoms of COVID-19 are improving, or as directed by a healthcare provider. This is the CDC's guidance as of the date of this letter. It is your responsibility to ensure you're following the most recent guidance issued by the CDC for returning to work after COVID-19.

An individual who comes in close contact with someone who has tested positive or is presumed positive for COVID-19 shall not return to the MPHA job site until completing a 14-day quarantine as measured from the last day of exposure to COVID-19, or as directed by a healthcare provider. If symptoms develop, the individual should continue to stay home and follow the steps outlined in the paragraph immediately above.

Hygiene

Basic infection prevention measures are being implemented at our sites.

All individuals need to **wash their hands** for at least 20 seconds with soap and water frequently throughout the day especially at the beginning and ending of their shift, prior to any mealtimes and after using the washroom. All individuals are required to wash or **sanitize their hands** prior to or immediately upon entering the facility. If gloves are worn, hands must be washed or sanitized after gloves are removed. If soap and water are not available, they need to use hand sanitizer that contains at least 60 to 95% alcohol.

All individuals are being instructed to cover their mouth and nose with their sleeve or a tissue when coughing or sneezing, and to avoid touching their face, particularly their mouth, nose and eyes, with their hands. Individuals are expected to dispose of tissues in provided trash receptacles and wash or sanitize their hands immediately afterward.

Inform individuals not to share phones, tools, utensils etc. If an item must be shared, the individual needs to use a disinfectant wipe to clean the item prior to sharing.

PPE

The proper personal protective equipment including goggles, face shields, disposable gloves, N95/K95 masks or face coverings must be worn that is appropriate for the situation and task at hand while complying with industry, local, state and federal guidance. Please do not share PPE equipment. Any person that must enter an occupied unit is required to wear a N95/K95 and face shield or goggles and gloves. Anyone in a public area of a MPHA facility must wear a face covering/mask.

Ensure used PPE is disposed of properly.

Physical Distancing – People must be at least six-feet apart when feasible

We understand that physical distancing is not always feasible especially during construction. When it is feasible, individuals need to maintain a distance of 6 feet or more from co-workers, MPHA’s residents MPHA’s employees, guests and visitors. This includes at lunch, breaks, entering and leaving the worksite, the use of elevators and stairs. Current guidance suggests that not only distancing but also the amount of time in close quarters has an impact on safety.

Cleaning/Disinfecting Protocol

Regular practices of cleaning and disinfecting is important part of the plan. Your employees will need to take the time to disinfect high touch areas. If your employee is in an occupied unit, they must disinfect the surfaces they may touch prior to conducting their work and again after the work is completed. It is imperative that they clean and disinfect anything that they may have touched prior to leaving the unit. Dispose of hand towels, tissue, wipes, etc. in appropriate receptacles.

Minnesota COVID 19 Preparedness Plan

If requested, you must present the COVID-19 Preparedness Plan for your organization required by the State of Minnesota.

MPHA appreciates your extra attention during this mutually difficult period. As always, we value your partnership as we work together to improve the lives of those we serve.

Acknowledgement: By my signature, I acknowledge that I have read, understand and agree with the requirements stated in this document. I understand that the organization that I am representing will be held accountable for educating the employees of the requirements and expectations. I certify that the organization has prepared the COVID-19 Preparedness Plan required by the State of Minnesota.

Signature _____ **Date** _____
Printed Name: _____ **Title:** _____
Company: _____

VISITOR AND EMPLOYEE HEALTH SCREENING CHECKLIST



CONDUCT HEALTH SCREENING EACH TIME EMPLOYEES OR VISITORS ENTER THE FACILITY.

You may also opt to conduct temperature screening if it can be done with proper social distancing, protection, and hygiene protocols. However, temperature screening is not required.

If a worker or visitor answers “Yes” to any of the screening questions, they should be advised to go home, stay away from other people, and contact their health care provider.

Have you had any of the following symptoms since your last day at work or the last time you were here that you cannot attribute to another health condition?

Please answer “Yes” or “No” to each question. Do you have:

- Fever or feeling feverish?
- Chills?
- A new cough?
- Shortness of breath?
- A new sore throat?
- New muscle aches?
- New headache?
- New loss of smell or taste?

SECTION 3 WORKER CERTIFICATION FORM (24 CFR §75)
(Public Housing Financial Assistance Programs Only)



PART I: EMPLOYEE INFORMATION (to be completed by the worker)

Name:	Hiring Priority (check the applicable box)					
Address:	<input type="checkbox"/> P1: Resident of MPHA's public housing project where the work is performed;					
	<input type="checkbox"/> P2: Residents of other projects managed by MPHA;					
Phone Number:	<input type="checkbox"/> P3: Participants in YouthBuild programs; and					
	<input type="checkbox"/> P4: Other low- and very low-income person residing within the Minneapolis metropolitan area.					
Gender:	Age Group:	18-24	25-34	35-44	45-64	65+
How did you hear about the job?	Are you a Trade Union member? If yes, state: Name: _____ Enrollment Date: _____					

SECTION 3/TARGETED SECTION 3 WORKER INFORMATION

- 1. Based on the below definition, do you qualify as a Section 3 Worker?** Yes No
Section 3 Worker means any worker who currently fits or when hired within the past five years fit at least one of the following categories, as documented:
- The worker's income for the previous or annualized calendar year is below the income limit established by HUD (maximum of \$62,600 per worker in 2022. See <https://mphaonline.org/> for more information).
 - The worker is employed by a Section 3 business concern.
 - The worker is a YouthBuild participant.
- 2. Based on the below definition, do you qualify as a Targeted Section 3 Worker?** Yes No
A Targeted Section 3 worker for public housing financial assistance is a Section 3 worker who:
- A worker employed by a Section 3 business concern; or
 - A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:
 - i. A resident of public housing or Section 8-assisted housing;
 - ii. A resident of other public housing projects or Section 8-assisted housing managed by the PHA that is providing the assistance; or
 - iii. A YouthBuild participant.

By signing below, I hereby certify and declare under penalty of perjury under the laws of the United States and the State of Minnesota that the above information is true and correct, and further agree to provide the Minneapolis Public Housing Authority with documentation verifying my Section 3 eligibility upon request.

Worker Signature: _____ **Date:** _____

PART II: EMPLOYER AND PROJECT INFORMATION (to be completed by the employer)

Employer Name:	MPHA Contract Number and Project Description:	Total Hours Worked by this Worker on this Project:
Work Location:	Position/Job Title:	Pay Rate:
Permanent: YES <input type="checkbox"/> NO <input type="checkbox"/>	Hire Date:	End Date:
Does your business qualify as a Section 3 Business based on definition in 24 CFR Part 75.5? YES <input type="checkbox"/> NO <input type="checkbox"/>		

By signing below, I hereby certify and declare under penalty of perjury under the laws of the United States and the State of Minnesota that, based upon Company's payroll records and personnel file, the information provided above is true and correct, and that I am authorized on behalf of the Company to make this certification.

Employer Contact Name: _____ **Tel/Email:** _____

Signature: _____ **Date:** _____

MPHA has determined the disclosure of this document, which includes the home address and private financial information of a public housing resident, would constitute an unwarranted invasion of personal privacy per Government Code section 6254(c), and therefore exempts this record from disclosure under the Minneapolis Public Records Act.