



RFP Document

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Amp 1 & Amp 2

1.1480.4523.01

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PART 1- General Information

1.1 Introduction

The Alexander City Housing Authority (hereinafter, "HA" or "ACHA") is a public entity that was formed to provide federally subsidized housing and housing assistance to low-income families, within Alexander City, Alabama. The HA is headed by an Executive Director (ED) and is governed by a five-person board of commissioners and is subject to the requirements of Title 24 of the Code of Federal Regulations (hereinafter, "CFR") and the HA's procurement policy.

1.2 Purpose

The Alexander City Housing Authority (ACHA) seeks proposals from qualified, licensed individuals and/or firms to provide Pest Control Services for properties managed by the Alexander City Housing Authority.

1.3 Method of Solicitation

ACHA is soliciting competitive proposals from qualified individuals and/or firms with a documented record of accomplishments providing the required services. The Request for Proposals (RFP) seeks to identify potential providers for the scope of services listed herein.

1.4 Obtain Copies of this Solicitation

Single copies of the RFP package may be obtained, at no cost by:

1. Visiting the ACHA's website at: www.alexcityhousing.org
2. Downloading at the Housing Agency Marketplace (E-procurement) at <https://ha.internationaleprocurement.com>
3. Requesting via email to michellewingler@alexcityhousing.org

Part II-Instructions for Submitting Proposals

2.1 Submission of Proposals

Respondents should submit **one (1) Hard Copy** of their proposal. The original submission shall be dated and signed by an authorized official of the company. Proposals must be submitted in a **sealed envelope** that shows the firm's name and address, and **clearly** written on the outside of the sealed envelope must be the words **"Installation of New Auto Reading Water Meters- Amp 1 & Amp 2 (-RFP 2024-1104)"** and **must be submitted on or before Thursday, December 12, 2024, at 2:00 pm (CST). The individual's/firm name must be enclosed in the sealed envelope with the hard copy.**

Proposals received after the deadline date and time **may be** determined unacceptable. Refer to form **HUD 5369 B, Section 6**, regarding late submissions and withdrawals.

All proposals must be submitted in accordance with the conditions and instructions provided herein and must remain open for acceptance for one hundred and eighty (180) days from the due date. Proposals should demonstrate detailed plans on how the Respondent intends to provide the required services in a manner that will result in the successful and timely completion of the service(s). In addition, the proposal should demonstrate the Respondent's capacity and readiness to perform the Scope of Services immediately upon execution of a contract with ACHA. Finally, the proposal should include evidence of the Respondent's previous experience and qualifications, relative to the provision of such services.

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2.2 Interpretation/Questions

During the period between issuance of this RFP and the proposal due date, no oral interpretation of the RFP's requirements will be given to any prospective respondent. Requests for interpretation must be made, in writing, by the questions due date and time as indicated on the coversheet (first page) of the RFP and send to: Email: michellewingler@alexcityhousing.org

2.3 Addendum and Update Procedures for the RFP

During the period of advertisement for this RFP, ACHA may wish to amend, add to, or delete from, the contents of this RFP. In such situations, ACHA will issue an addendum to the RFP setting forth the nature of the modification(s). ACHA will email (or send via regular postal mail or fax upon request) any addenda to Respondents of this RFP solicitation. Interested parties may also view addenda on ACHA's website www.alexcityhousing.org or at the Housing Agency Marketplace at <https://ha.internationaleprocurement.com>. It shall be the responsibility of each Respondent to ensure they have any/all addenda relative to this RFP.

2.4 Proposal Format

All proposals shall be submitted in 8 ½ x 11-inch format, preferably in three (3) ring binders. Larger size pages or inserts may be used, provided they fold into 8 ½ x 11 inches. Inserts shall not be stapled together. All copies of the submittal must be identical in content and organization. The format of the Respondent's proposal should be structured the same as the format of the RFP. Proposals should be organized into sections and tabbed for ease of review. Respondents must provide a comprehensive Table of Contents at the front of the proposal. The proposal also must be organized in response to the Submission Requirements. The front cover of the proposal should bear the name and number of the RFP, the date, and the Respondent's name, address, phone number and email address.

2.5 Submittal Forms

Provided, as a part of the proposal, all required certifications and HUD forms, ACHA forms, licenses, and proof of insurance. All forms that require a signature or initials must bear an original initial or signature.

2.6 Acceptance of Proposals

Proposals must be signed, sealed, and received in a completed form at ACHA, no later than the proposal closing date and time. Proposals submitted after the designated closing date and time could potentially not be accepted and could potentially be returned unopened to the originator.

ACHA reserves the right to accept or reject any or all proposals, to take exception to these RFP specifications or to waive any formalities. Respondents may be excluded from further considerations for failure to comply with the specifications of this RFP.

ACHA reserves the right to reject the proposal of Respondents, who have previously failed to perform properly or to complete on time, a contract of a similar nature. ACHA also reserves the right to reject proposals of Respondents who habitually, without just cause, neglect the payment of bills, or disregard their obligations to subcontractors, providers of materials, or employees.

2.7 Time for Reviewing Proposals

Proposals received prior to the closing date and time will be securely kept unopened until the closing date and time. Proposals received after the closing date and time could potentially not be considered. ACHA's Evaluation Committee, appointed by the Executive Director, will evaluate all proposals properly received.

The Evaluation Committee will analyze proposals within the 180 days of the date and time due and make a recommendation for award of contract or not to award, to the ACHA Executive Director.

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2.8 Withdrawal of Proposals

Proposals may be withdrawn by written notice received any time before the contract award. Proposals may be withdrawn in person by Respondent or its authorized representative if the identity of such representative is established and a signed receipt of the withdrawn proposal is received by ACHA prior to the contract award.

2.9 Award of Contract

ACHA reserves the right to make an award based solely on the proposals or to negotiate further with the Respondent(s). The Respondent(s) selected for the award will be chosen based on an assessment of the greatest benefit to the ACHA, not necessarily based on lowest cost. ACHA also reserves the right to negotiate and award any element of the RFP, make multiple awards, reject any or all proposals or waive any minor irregularities or technicalities in proposal received as in the best interest of ACHA. Contract shall be awarded to the Respondent(s) submitting a proposal according to the evaluation criteria contained herein. ACHA reserves the right to interview or receive demonstrations of products/services from one or more Respondent(s) whose submittals are evaluated above the acceptable 75 points as detailed in Section 5.1 Proposal Evaluation/Contract Award. The Respondent(s) to whom the award is made will be notified at the earliest practical date.

Contract Terms

This contract will be for the proposed scope of work as listed in this RFP.

2.10 HUD Debarment and Suspension List

The Respondent and all subcontractors' names or businesses must not appear on the HUD's Debarment and Suspension list.

2.11 Certification of Legal Entity

Prior to execution of the contract agreement, the Respondent shall certify that joint ventures, partnerships, team agreements, new corporations, or other entities that either exist or will be formally structures are, or will be, legal and binding under the Alabama State Law.

2.12 Cost Borne by Respondent

All costs related to the preparation of this RFP and any related activities are the responsibility of the Respondent. ACHA assumes no liability for any costs incurred by the Respondent throughout the entire selection process.

2.13 Best Available Data

All information contained in the RFP is the best data available to ACHA at the time the RFP was prepared. The information given in the RFP is not intended as representation having binding legal effect. This information is furnished for the convenience of Respondents and ACHA assumes no liability for any errors or omissions.

2.14 Contact with ACHA Staff, Board Members and Residents

Beyond the above referenced written communications, Respondents and their representatives may not make any other form of contact with ACHA staff, Board members, or residents. Any improper contact by or on behalf of Respondents may be grounds for disqualification.

2.15 Licenses and Insurance

The awarded individual/firm shall have and maintain all required licenses necessary to conduct business in the City of Alexander City and the State of Alabama. All licenses must be kept up to date for the duration of any ensuing contract. Copies of all licenses must be in the Procurement/Contract office prior to contract execution.

Prior to contract award and for the duration of the contract, the successful proposer will be required to provide proof of insurance (as outlines) and the ACHA shall be named as an additional insured.

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Professional Liability (and/or Errors & Omissions) Coverage	\$1,000,000 each occurrence
General Liability Coverage	\$1,000,000 each occurrence
Comprehensive Automobile Liability Coverage	\$1,000,000 each occurrence
Workers' Compensation with Statutory Limits of the State of AL	

2.16 Respondent Responsibilities

Each Respondent is presumed by ACHA to have thoroughly studied this RFP and become familiar with the contents, locations, and nature of requests. Any failure to understand completely any aspect of this RFP is the responsibility of the Respondent.

2.17 No Claim Against ACHA

The Respondent shall not obtain, by submitting a proposal in response to this RFP, any claim against ACHA or ACHA's property for reason of all or any part of any of the following: the selection process; the rejection of any or all offers; the acceptance of any offer; entering into any agreements or the failure to enter any agreements; any statement, representations, acts or omissions of ACHA or any person or entity acting on its behalf; the exercise of any discretion set forth in or concerning any of the foregoing; and any other matters arising out of the foregoing.

PART III- SUBMISSION REQUIREMENTS

3.1 Tabbed Proposal Submittal

The Agency intends to retain the Contractor pursuant to a "Best Value" basis, not a "Low Bid" basis ("Best Value", in that the Agency will, as detailed within the following Section 5.2, consider factors other than cost in making the award decision). Therefore, so that the Agency can properly evaluate the offers received, all proposals submitted in response to this RFP must be formatted in accordance with the sequence noted within the table below. Each category must be separated by numbered index dividers, which number extends so that each tab can be located without opening the proposal and labeled with the corresponding tab reference also noted below. Inserts shall not be stapled together. None of the proposed services may conflict with any requirement the Agency has published herein or has issued by addendum.

RFP Section	Tab No.	Description
3.1.1	1	Form of Proposal. This 2-page Form must be fully completed. Executed where provided thereon and submitted under this tab as a part of the proposal submittal.
3.1.2	2	Form HUD-5369- Certifications and Representations of Offers Non-Construction, Form HUD SF-LLL Disclosure of Lobbying Activities, Form HUD 50071 Certification of Payments to Influence Federal Transactions, Form HUD 50070 Certification for a Drug-Free Workplace, Form HUD 2530 Previous Participation Certification, Certificate as to Corporate Principle Form, Non-Collusive Form These forms must be fully completed, executed where provided thereon and submitted under this tab as a part of the proposal submittal, where applicable.
3.1.3	3	Profile of Firm Form. This 2-page Form must be fully completed, executed, and submitted under this tab as a part of the proposal submittal.
3.1.4	4	Proposed Services. Respondent shall place under this tab documentation further explaining the firm's services and showing how the firm intends to fulfill the requirements of the Scope of Services listed in the preceding Section Part IV herein, including, but not limited to:
3.1.4.1		The proposer's DEMONSTRATED UNDERSTANDING of the AGENCY'S REQUIREMENTS and REQUESTED SERVICES .
3.1.4.2		APPROPRIATE TECHNICAL APPROACH and the QUALITY of the SERVICES PROPOSED . Provide a detailed narrative that demonstrates the approach or how the Respondent will engage with ACHA staff. Outline its anticipated approach/engagement for each element of

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		work identified in the Scope of Services. The outlined approach/engagement should be consistent with the objectives and requirements set forth in the RFP and should address how services will be immediately provided upon execution of a contract.
3.1.4.3		TECHNICAL CAPABILITIES (in terms of personnel) and the MANAGEMENT PLAN (including the ability to provide the services detailed herein). Describe professional competence and experience with the management of Pest Control.
3.1.4.4		The proposer's DEMONSTRATED EXPERIENCE in performing similar work and DEMONSTRATED SUCCESSFUL PAST PERFORMANCE . Identify similar or related work performed for public housing authorities or other companies that has been completed to date.
3.1.4.5		If appropriate, how staff are retained, screened, trained and monitored.
3.1.4.6		Approach to QUALITY CONTROL
3.1.5	5	Managerial Capacity/Financial Viability/Staffing Plan. The proposer's entity must submit under this tab a concise description of its managerial and financial capacity to deliver the proposed services, including brief professional resumes for the persons identified within areas (5) and (6) of the <i>Profile of Firm Form</i> .
3.1.6	6	Client Information. The proposer shall submit a listing of former or current clients, including any other Public Housing Authority, for whom the proposer has performed similar or like services to those being proposed herein. The listing shall, at a minimum, include:
3.1.6.1		The client's name;
3.1.6.2		The client's contact name;
3.1.6.3		The client's telephone number and email address;
3.1.6.4		A brief description and scope of the service(s) and the dates the services were provided
3.1.7	7	Equal Employment Opportunity/Supplier Diversity. The proposer must submit under this tab a copy of its Equal Opportunity Employment Policy and a complete description of the positive steps it will take to ensure supplier diversity (e.g., small, minority, and women-owned businesses).
3.1.8	8	Subcontractor/Joint Venture Information. The proposer shall identify hereunder whether he/she intends to use any subcontractors for this job, if awarded, and/or if the proposal is a joint venture with another firm. Please remember that all information required from the proposer under the preceding tabs must also be included for any major subcontractors (10% or more) or from any joint venture. If the Respondent is a joint venture, or another entity formed solely for responding to this RFP, provide evidence of prior successful collaborations. Proposer will submit under tab 3 a Profile of Firm for each subcontractor /joint venture that he/she intends on utilizing.
3.1.9	9	Section 3 Plan, Clause Compliance Commitment Form and Participation Election Form Documentation. All respondents must read the attached Section 3 Plan (Exhibit A). All respondents must read, sign, and submit the Section 3 Clause Compliance Commitment Form and Section 3 Participation Election Form. Any respondent who is Certified Section 3 Business must include the certification, along with the Section 3 Business Concern Certification Form. These forms shall be included under this tab and be fully completed and executed. These forms are attached hereto as Exhibit A1.
3.1.10	10	Other Information. The proposer may include hereunder any other general information that the proposer believes is appropriate to assist the Agency in its evaluation.
3.1.11		No Information Placed under a Tab. If no information is to be placed under any of the above noted tabs, please place there under a statement such as "NO INFORMATION IS BEING PLACED UNDER THIS TAB" or "THIS TAB LEFT INTENTIONALLY BLANK". DO NOT eliminate any of the tabs
3.1.12		Proposal Submittal Binding Method. It is preferable and recommended that the proposer bind the proposal submittals in such a manner that the Agency can, if needed, remove the binding (i.e., "comb-type;" etc.) or remove the pages from the cover (i.e., 3-ring binder; etc.) to make copies, and then conveniently return the proposal submittal to its original condition.

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3.2 Proposal Pricing/Cost

Respondents shall provide a fixed proposed cost for the Statement/Scope of Work (SOW) listed below.

Installation New Auto Reading Water Meters

- **Site Visit is required**
- **The Contractor is to provide all tools and labor necessary to install a new auto reading meter at 477 apartments**
 - **Amp 1** **210 Apartments**
 - **Amp 2** **267 Apartments**
- **Meters and other plumbing materials will be provided by ACHA**
- **Remove old water meters and meter transmitters from meter boxes**
- **Install new water meters and transmitters into the meter boxes**
- **Install unit in accordance with manufacturer's recommendations**
- **After installation, test unit for operation in all settings**
- **Any water leaks in the system must be immediately repaired**
- **Any issues not noted in scope of work but become revealed during installation must be immediately brought to the attention of ACHA**
- **All construction debris is the responsibility of the contractor and must be disposed of properly**
- **Any damage to personal property as a result of the work will be the sole responsibility of the contractor**
- **During installation, the area must be always kept clean and safe**
- **HUD Maintenance Wage Rates Determination (MWRD)- HUD has determined that, for non-construction maintenance work (work not covered by Davis-Bacon requirements), the HA must ensure that contractors do not pay its employees that perform such work for the HA at a rate less than the rates listed on the HUD MWRD. Therefore, by submitting a bid, each bidder thereby agrees to and verifying that he/she will not pay his/her employees at rates less than designated rates from HUD.**

3.3 Required Certifications/Forms

Each proposal shall contain an executed copy, if applicable, of the following HUD and ACHA forms, which are attached herein. If a form does not apply, please state 'not applicable' and include in the proposal submission:

	Section 3 Clause Compliance Commitment Form (included in Exhibit A1)
	Section 3 Participation Election Form (included in Exhibit A1)
	Form of Proposal
	Profile of Firm Form
	Certificate as to Corporate Principle Form
	Non-Collusive Form
Form HUD 5369-B	Instructions to Offerors-Non-Construction
Form HUD 5369	Certifications and Representations of Offerors-Non-Construction Contract
Form HUD SF-LLL	Disclosure of Lobbying Activities
Form HUD 50071	Certification of Payments to Influence Federal Transactions
Form HUD 50070	Certification for a Drug-Free Workplace
Form HUD 2530	Previous Participation Certification

PART IV- SCOPE OF SERVICES

See Section 3.2 of this RFP

PART V-PROCUREMENT PROCESS

5.1 Proposal Evaluation/Contract Award

Proposals received in response to this solicitation will be evaluated using the following evaluation process.

- a. The evaluation process will be used to determine the firms that will comprise the short list, from which final selection for contract award will ultimately be made.
 - 1) During the evaluation process, technical proposals will be evaluated and scored by an Evaluation Committee.
 - 2) Each member of the Evaluation Committee will score each proposal.
 - 3) Scoring will be based on predetermined Evaluation Criteria. The available points associated with each area of consideration are shown below in item 5.2.
 - 4) The results of the evaluation, of both technical and cost proposals, will be used to determine those proposals to be considered in the competitive range.
 - 5) Proposals will be considered acceptable if they have a minimum score of 75 points and above.
 - 6) The Authority may require that proposers whose submittals are above the minimum score of **75 points**, be interviewed by the Authority's Evaluation committee if deemed necessary. The Respondent should be prepared to field questions concerning their qualifications and/or the required services to the Authority's Evaluation Committee. The Authority reserves the right to have one or more respondent(s) subject to an interview.
 - 7) Cost proposals will be considered acceptable if the proposed cost is clearly not excessive compared to the proposed costs of other Respondents with acceptable technical proposals.
 - 8) Respondents with acceptable technical and cost proposals may be requested to supply additional information to assist in completing the due diligence review. Failure to satisfactorily complete the due diligence review within the timeframe established by ACHA will result in disqualification of Respondents proposals.
- b. Scoring will be based upon how well the proposal meets the criteria established in this RFP.
- c. ACHA reserves the right to make no award or decline to enter negotiations should it believe that no Respondent to this RFP would be capable of delivering the necessary level of service within an acceptable price range and/or the time period.
- d. The Evaluation Committee will evaluate the merits of proposals received in accordance with the criteria stated in the RFP and formulate a recommendation. However, while a numerical rating system may be used to assist the Evaluation Committee in selecting the competitive range (if necessary) and making an award recommendation decision, the award decision is ultimately a business decision that will reflect an integrated assessment of the relative merits of the proposal using the criteria and their relative weights disclosed in the RFP.

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5.2 Evaluation Criteria

- a. Proposed Costs : 10 Points**
 - 1) The proposed costs the proposer proposes to charge the HA to provide the required work.
- b. Demonstrated Understanding of the Requirements: 20 Points**
 - 1) How the Proposer demonstrates the understanding of all the requirements and work involved in this RFP.
- c. Appropriateness of the Technical Approach/ Quality of Work: 35 Points**
 - 1) The Proposer's business background (number of years in business), any special license obtained. The appropriateness of the labor categories estimated hours and skill mix.
 - 2) The Proposer's quality of work as noted by the previous clients and references listed in RFP.
 - 3) The Proposer's demonstrated ability to meet costs, schedules, and any other requirement of this RFP.
- d. Technical Capabilities: 35 Points**
 - 1) The proposer noted personnel, equipment, and materials to be used for the requirements of this RFP. The proposer's noted management plan includes staffing, method of assigning work and maintaining level of service.
- e. Section 3 Plan, Compliance Commitment & Participation Election Form Documentation. 10 Points**

5.3 Summary of Evaluation Criteria

<u>Evaluation Criteria</u>	<u>Points</u>
Proposed Costs	10 Points
Demonstrated Understanding of the Requirements:	20 Points
Appropriateness of the Technical Approach/ Quality of Work:	35 Points
Technical Capabilities:	35 Points
Section 3	<u>10 Points</u>
Total	110 Points



COST PROPOSAL FORM

TYPE OF PROJECT: The Alexander City Housing Authority (“ACHA”) seeks proposals from qualified, licensed individuals and/or firms to provide Pest Control Services

DATE ISSUED: Monday, November 4, 2024

CONTACT PERSON: Michelle Wingler, Procurement/Contract Manager
michellewingler@alexcityhousing.org

LAST DAY FOR QUESTIONS: Thursday, November 14, 2024, at 2:00 pm (CST)

SUBMISSION DEADLINE: Thursday, December 12, 2024, at 2:00 pm (CST)

FILL IN BELOW AND SIGN. PRICES ARE GUARANTEED FOR A MINIMUM OF 180 DAYS FROM PROPOSAL DEADLINE DATE.

COMPANY NAME:

CONTACT:

Signature _____ Printed Name _____ Title _____

ADDRESS:

Street/POB _____ City _____ State _____ Zip _____

PHONE: _____ FAX: _____ EMAIL: _____

Date Signed: _____

FORM OF PROPOSAL

(This Form must be fully completed and placed under Tab No. 1 of the "hard copy" tabbed proposal submittal.)

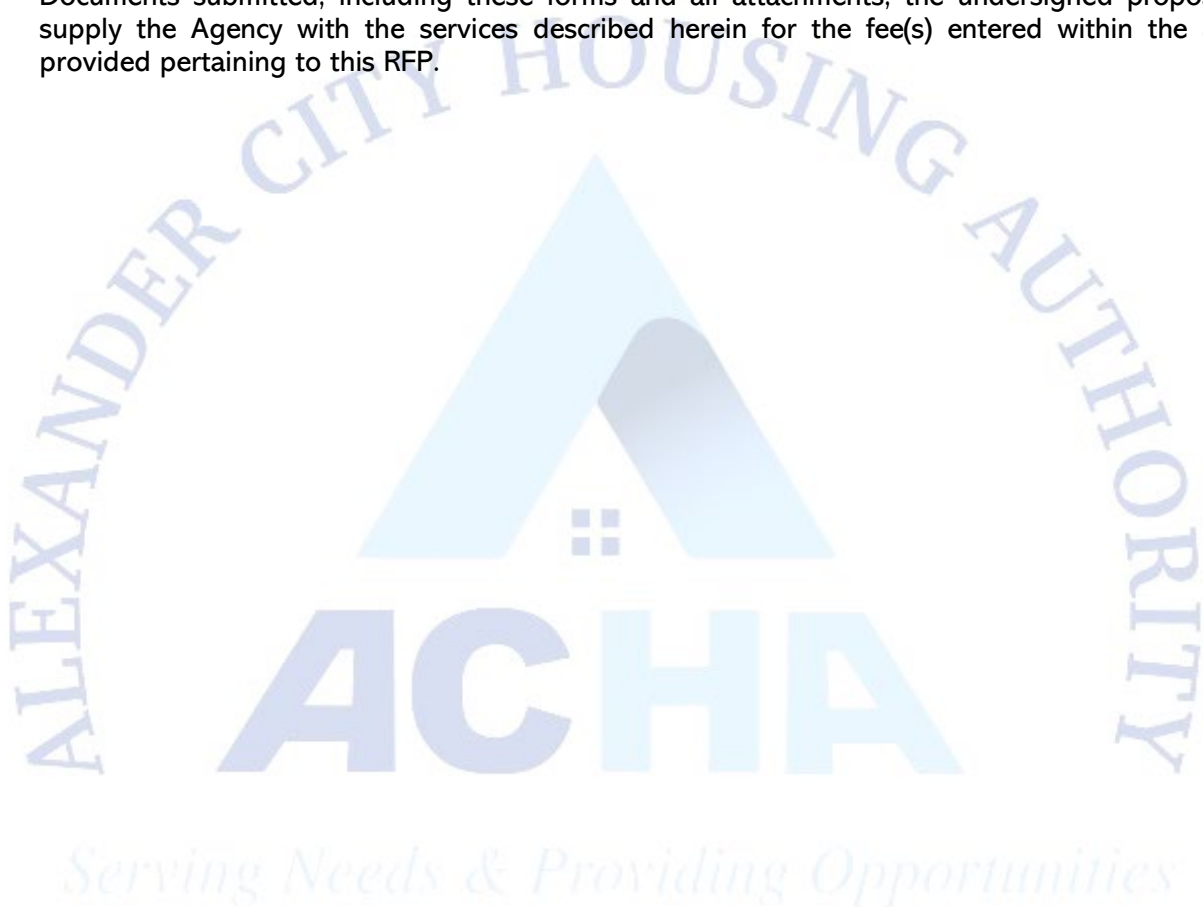
- Instructions:** Unless otherwise specifically required, the items listed below must be completed and included in the proposal submittal. Please complete this form by marking an "X", where provided, to verify that the referenced completed form or information has been included within the proposal submittal, submitted by the proposer. Also, complete the Section 3 Statement and the Proposer's Statement as noted below:

X=ITEM INCLUDED	Tab No.	SUBMITTAL ITEMS (one original signature copy of each document)
	1	Form of Proposal
	2	Form HUD-5369-C and other required forms
	3	Profile of Firm Form
	4	Proposed Services
	5	Managerial Capacity/Financial Viability/Staffing Plan
	6	Client Information
	7	Equal Employment Opportunity Statement/ Supplier Diversity
	8	Subcontractor/Joint Venture Information
	9	Section 3 Plan, Clause Compliance & Participation Election
	10	Other Information

- Debarred Statement.** Has this firm, or any principal(s) thereto, ever been debarred from providing any services by the Federal Government, or any state government, the State of Alabama, or any local government agency within or without the State of Alabama?
YES_____ or **NO**_____. If "YES" please attach a full detailed explanation, including dates, circumstances, and current status.
- Disclosure Statement.** Does this firm/company or any principals thereof have any current, past personal or professional relationship with any Commissioner or Officer of the Agency?
YES_____ or **NO**_____. If "YES", please attach a full detailed explanation, including dates, circumstances, and current status
- Felony Disclosure.** Has any principal(s) or any person(s) proposed to perform the work ever been convicted of a felony?
YES_____ or **NO**_____. If "YES", please attach a full detailed explanation, including dates, circumstances, and current status. PLEASE NOTE: The Agency reserves the right to not make award to any proposer that has staff who has been convicted of a felony if the Agency feels that doing such is in its best interests.
- Non-Collusive Affidavit.** The undersigned party submitting this proposal hereby certifies that such proposal is genuine and not collusive, and that said proposer entity has not colluded, conspired, or connived or agreed, directly or indirectly, with any proposer or person, to put in a sham proposal or to refrain from proposing, and has not in any manner, directly or indirectly sought by agreement or collusion, or communication or conference, with any person, to fix the proposal price or affiliate or of any other proposer, to fix overhead, profit or cost element of said proposed price or affiliate or of any other proposer or to secure any advantage against the Agency or any person interested in the proposed contract; and that all statements in said proposal are true.

FORM OF PROPOSAL

6. **Proposer's Statement.** The undersigned proposer hereby states that by completing and submitting this form and all other documents within this proposal submittal, he/she is verifying that all information provided herein is, to the best of his/her knowledge, true and accurate, and that if the Agency discovers that any information entered herein to be false, such shall entitle the Agency to not consider or make award or to cancel any award with the undersigned party. Further, by completing and submitting the proposal submittal, the undersigned proposer is thereby agreeing to abide by all terms and conditions pertaining to this RFP as issued by the Agency. Pursuant to all RFP documents, this Form of Proposal, and all attachments, and pursuant to all completed Documents submitted, including these forms and all attachments, the undersigned propose to supply the Agency with the services described herein for the fee(s) entered within the areas provided pertaining to this RFP.



Signature

Date

Printed Name

Company

PROFILE OF FIRM FORM



(This Form must be fully completed and placed in the submittal.)

Prime _____ Sub-Contractor _____
(Proposer must also identify his sub-contractors (if any) by providing Profile of Firm form for each)

1) Name of Firm: _____

2) Street Address, City, State, Zip: _____

3) Telephone: _____ Fax: _____

4) Email: _____

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

_____ Caucasian American (Male) _____ (%)	_____ Public-Held Corporation _____ (%)	_____ Government Agency _____ (%)	_____ Non-Profit Organization _____ (%)
_____ Women-Owned (MBE) _____ (%)	_____ Women-Owned (Caucasian) _____ (%)	_____ Disabled Veteran _____ (%)	_____ Other (Specify) _____ (%)

WMBE Certification Number: _____

Certified by: _____

(NOTE: A Certification/ Number Not Required To Propose-Enter If Available)

6) Federal Tax ID No. _____
DUNS No. _____

7) Business License No. _____ State _____

8) General Liability Insurance Carrier: _____

Policy No. _____ Expiration Date _____

9) Worker's Compensation Insurance Carrier: _____

Policy No. _____ Expiration Date _____

PROFILE OF FIRM FORM

10) Professional Liability Insurance Carrier: _____

Policy No. _____ Expiration Date _____

11) Debarred Statement: Has this firm or any principal(s) ever been debarred from providing any services by the Federal Government, any State Government, the State of Alabama, or any local government agency within or without the State of Alabama? YES _____ NO _____
If "YES" please attach a full detailed explanation, including dates, circumstances, and current status.

12) Disclosure Statement: Does this firm or any principals thereof have any current past personal or professional relationship with any Commissioner or Officer of ACHA? YES _____ - NO _____
If "YES" please attach a full detailed explanation, including dates, circumstances, and current status.

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

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

15) Code of Alabama § 11-93-2. Maximum amount of damages recoverable against governmental entities; settlement or compromise of claims not to exceed maximum amounts.
The recovery of damages under any judgment against a governmental entity shall be limited to \$ 100,000.00 for bodily injury or death for one person in any single occurrence. Recovery of damages under any judgment or judgments against a governmental entity shall be limited to \$300,000.00 the aggregate where more than two persons have claims or judgements on account of bodily injury or death arising out of any single occurrence. Recovery of damages under any judgement against a governmental entity shall be limited to \$ 100,000.00 for damage or loss of property arising out of any single occurrence. No governmental entity shall settle or compromise any claim for bodily injury, death, or property damage in excess of the amounts herein above set forth. (Acts 1977, No. 673, p. 1161, §2.)

Signature

Date

Printed Name

Title

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the
_____ of the corporation Named as the
Principle in the within bond; that _____,
who signed the said bond on behalf of the Principle was then _____
of said corporation; that I know his signature, and his signature thereto is genuine, and
that said bond was duly signed, sealed, and attested to for and in behalf of said
corporation by authority of its governing body.

(Affix Corporate Seal)

Serving Needs & Providing Opportunities

NON-COLLUSIVE AFFIDAVIT
(Prime Bidder/ Respondent)

State of _____

County of _____

_____, Being first duly sworn, deposes and says that he/she is
_____, (a partner or officer of the firm of, etc.) the party making
the foregoing proposal or bid, that such proposal or bid is genuine and not collusive or sham; that said
respondent/bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any
respondent/bidder person, to put in a sham bid/cost or to refrain from bidding or submitting cost
proposal, and has not in any manner, directly or indirectly, sought by agreement to collusion, or
communication or conference, with any person, to fix the bid/cost price of affiant or of any other
respondent/bidder, or to secure any advantage against the City of Alexander City Housing Authority or
any person interested in the proposed contract:

And that all statements in said proposal or bid are true.

(Respondent/Bidder, if the respondent/bidder is an individual ; Partner, if the respondent/ bidder is a Partnership; officer, if the respondent/bidder is a corporation)

Subscribed and sworn to before me this

_____ Day of _____, 20__

My commission expires _____, 20__

CONTRACT BETWEEN *SAMPLE Contract*
ALEXANDER CITY HOUSING AUTHORITY
AND

INTRODUCTION

This contract by and between the Alexander City Housing Authority (hereinafter "HA"), and _____, (hereinafter "the Contractor") is hereby entered into this _____ day of _____, 2024.

Services pursuant to this contract shall begin on the _____ day of _____, 2024, and shall end on the _____ day of _____, 2025, unless otherwise extended, modified, terminated or renewed by the parties as provided for within this contract. Unless otherwise detailed herein, all references to "days" shall be calendar days (in the case that the last day referenced falls on a Saturday, Sunday, or legal holiday, then the period of time shall be automatically extended to include the next workday). Also, whenever the term "herein" is referred to, such refers to this contract form, the appendices, and all listed attachments.

1.0 Definitions:

- 1.1 **Housing Authority (HA):** Any reference herein or within any Appendix to the "Housing Authority" shall be interpreted to mean the same as the HA or any properties Managed by the Alexander City Housing Authority.
- 1.2 **Contracting Officer (CO):** The HA Contracting Officer, typically the HA Executive Director, but may be another person delegated such authority by the ED.
- 1.3 **Executive Director (ED):** The HA Executive Director.
- 1.4 **Request For Proposals (RFP):** A competitive solicitation process conducted by the HA wherein award was completed to the top-rated responsive and responsible proposer.

2.0 Services and Payment:

- 2.1 **Scope of Services:** The services provided pursuant to this contract as directed in the Scope Of Work as listed.
- 2.2 **Cost/ Value of Services:**

2.3 Billing Method:

2.3.1 To receive payment for services rendered pursuant to this contract the Contractor shall submit a fully completed invoice for work previously performed to:

The Alexander City Housing Authority
Attn: Property Manager and /or Maintenance Supervisor
633 A Street
Alexander City, Alabama 35010

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

2.3.2.1 Unique invoice number;

2.3.2.2 Contractor's name, address and telephone number;

2.3.2.3 Date of invoice and/or billing period;

2.3.2.4 Applicable Contract No. C-2024-1104

2.3.2.5 Applicable Purchase Order No;

2.3.2.6 Brief description of services rendered, including applicable time frame, total hours being billed for each service at each detailed site, and at the approved rate (may be submitted in the form of a report)

2.3.2.7 Total dollar amount being billed

2.3.3 The HA receives the right to pay each such properly completed invoice received on a Net/30 basis. Invoices, along with a completed certified payroll sheet must be submitted to the appropriate Maintenance Personnel

3.0 HUD Maintenance Wage Rates Determination (MWRD)- *HUD has determined that, for non-construction maintenance work (work not covered by Davis-Bacon requirements), the HA must ensure that contractors do not pay its employees that perform such work for the HA at a rate less than the rates listed on the HUD MWRD. Therefore, by submitting a bid, each bidder is thereby agreeing to and verifying that he/she will not pay his/her employees at rates less than the following:*

3.1 The Current Davis Bacon Wage Determinations for Tallapoosa County can be found on the following website:

3.1.1 <https://sam.gov/content/wage-determinations>

4.0 Contractor's Obligations: Pursuant to this contract, the Contractor agrees to provide the specific services detailed herein and also shall be responsible for the following:

4.1 Supervision and Oversight: The Contractor shall be solely responsible for providing supervision and oversight to all of the Contractor's personnel that are assigned to the HA properties pursuant to this contract

- 4.2 Qualified Personnel:** The Contractor warrants and represents that it will assign only qualified personnel to perform the services outlined herein and within the appendices. For the purposes of this contract, the term “qualified personnel” shall mean those personnel that have been investigated, tested and trained in the manner described within this contract and, as proposed by the Contractor within its bid or as provided by the Contractor during the Contractor’s normal conduct of business. The Contractor will submit to the HA a list of all employees, a copy of their driving licenses and classifications of employees to be working on said contract. The Alexander City Housing Authority is a certified drug free workplace and as such, expects contractors and their employees performing work on the Alexander City Housing Authority properties to adhere to these standards. If at any time during this contract, a contractor or their employee appears to be under the influence, the Contractor will be asked to remove/replace said employee. The Alexander City Housing Authority maintains a list of individuals barred from the properties of the Alexander City Housing Authority. Anyone on this list will not be allowed to work on the Alexander City Housing Authority properties or properties managed by the Alexander City Housing Authority. There are two (2) Youth and Adult Centers included in the Alexander City Housing Authority properties, therefore anyone registered as a sex offender will not be allowed to work on any of the properties owned or managed by the Alexander City Housing Authority.
- 4.3 Compliance with Federal and State Laws:** All work performed by the Contractor, pursuant to this contract, shall be done in accordance with all applicable Federal, State and local laws, regulations, codes and ordinances.
- 4.4 Insurance Requirements:**
- 4.4.1** The complete indemnity requirements are detailed within Section 11.19 herein
- 4.4.2** In this regard, the Contractor shall maintain the following insurance coverage during the effective term(s) of this contract:
- 4.4.2.1** Policy of General Liability Insurance, \$1,000,000 per occurrence, \$1,000,000 aggregate together with damage to the premises and fire damage of \$50,000 with a deductible not greater than \$1,000. The HA shall be named upon certificate issued as an” additional insured”, together with providing a copy of the corresponding endorsement evidencing the same.
- 4.4.2.2** Automobile Liability coverage in a combined single limit of \$1,000,000. For every vehicle utilized during the term of this contract, when not owned by the entity, each vehicle must have evidence of automobile insurance coverage with

1.1480.4523.01

1.1480.4523.03

limits of no less than \$50,000/\$100,00 and medical pay of \$5,000 with a deductible not greater than \$1,000.

4.4.2.3 Worker's compensation coverage evidencing carrier and coverage amount

4.4.2.4 The Contractor shall provide to the HA with current certificate(s)/endorsement(s) evidencing the insurance coverage referenced above. Failure to maintain the above reference insurance (where appropriate) during the term(s) of this contract shall constitute a material breach thereof.

4.4.2.5 Insurance certificate(s) /endorsement(s) shall be delivered to the following person representing the HA:

Michelle Wingler
Procurement/Contract Manager
Alexander City Housing Authority
2110 County Road
Alexander City, Alabama 35010

4.5 Financial Viability and Regulatory Compliance:

4.5.1 The Contractor warrants and represents that its corporate entity is in good standing with all applicable federal, state, and local licensing authorities and that it processes all requisite licenses to perform the services required by this contract. The Contractor further warrants and represents that it owes no outstanding delinquent federal, state, or local taxes or business assessments.

4.5.2 The Contractor agrees to promptly disclose to the HA any IRS liens or insurance or licensure suspension or revocation that may adversely affect its capacity to perform the services outlined within this contract. The failure by the Contractor to disclose such an issue to the HA in writing within 5 days of such notification received will constitute a material breach of this contract.

4.5.3 The Contractor further agrees to promptly disclose to the HA any change of more than 50% of its ownership and/ or any declaration of bankruptcy that the contractor may undergo during the term(s) of this contract. The failure of the Contractor to disclose any change of more than 50% of its ownership and/ or its declaration of bankruptcy within 5 days of said actions shall constitute a material breach of the contract.

4.5.4 All disclosures made pursuant to this section of the contract shall be made in writing and submitted to the HA within the time periods required herein

5.0 Modification: This contract shall not be modified, revised, amended, or extended except by written addendum, executed by both parties.

6.0 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 herein.

7.0 Applicable Laws:

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

7.2 Jurisdiction of Law: The laws of the State of Alabama 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 Tallapoosa County, Alabama is the appropriate forum for any action relating to this contract. Should any party hereto retain counsel for the purpose of initiating litigation or arbitration to enforce, prevent the breach of any provision hereof, or for any other judicial remedy, then the prevailing party shall be entitled to be reimbursed by the losing party for all costs and expenses incurred thereby, including, but not limited to, reasonable attorney's fees and costs incurred by such prevailing party. This contract may be signed in counterparts.

8.0 Notices, Invoices and Reports:

8.1 All notices, reports and/or invoices submitted to the HA by the Contractor pursuant to this contract shall be in writing and delivered to the attention of the following person representing the HA:

**Michelle Wingler
Alexander City Housing Authority
2110 County Road
Alexander City, AL 35010
256-329-2201**

Or if appropriate, faxed to: 256-329-6535 or emailed to michellewingler@alexcityhousing.org

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

9.0 Disputed Billings (Charges):

9.1 Procedures: In addition to the procedures detailed within Clause No. 7 of Appendix No. 1, Form HUD-5370-C (10/2006), *General Conditions for Non-Construction Contracts, Section 1-(With or without Maintenance Work)*, in the event that the HA disputes any portion of its billing(s), the HA shall pay the undisputed portion of such billing and initiate the dispute-resolving procedures, as follows:

9.1.1 The HA's representative shall, within 10 days after the HA's receipt of such billing, formally notify the contractor's representative of all particulars pertaining to the dispute, and request that he/she investigate and respond to this issue

9.1.2 If such dispute cannot be resolved by the contractor's response, within 10 days after such notification is given, the CO and the contractor's representative shall meet to discuss the matter and attempt to arrive at a resolution

9.1.3 If the CO and the contractor's representative are unable to resolve the dispute through such discussion within 10 days, the HA shall, within 10 days thereafter, either:

9.1.3.1 pay the disputed charges and reserve the right to submit the matter to the Alabama Court Annexed Arbitration program if the disputed amount does not exceed \$40,000 or to the appropriate district court in the State of Alabama

9.1.3.2 not pay the disputed charge and submit the matter to the Alabama Court Annexed Arbitration program if the disputed amount does not exceed \$40,000 or to the appropriate district court in the State of Alabama

9.1.3.3 not pay the disputed charge and allow the Contractor to submit the matter either to the Alabama Court Annexed Arbitration program if the disputed amount does not exceed \$40,000 or to the appropriate district court in the State of Alabama

9.1.4 The decision from arbitration will be binding upon both parties. If the decision is averse to the HA, the HA shall pay the HA's receipt of the decision. If the decision is in favor of the HA, the Contractor will either:

9.1.4.1 clear the amount which is ordered from the HA account; or

9.1.4.2 repay to the HA the amount ordered

Either option shall be completed within 10 days after the contractor's receipt of the arbitrator's decision

10.0 24 CFR 85.36(i), Procurement: Pursuant to this CFR, as issued by the Office of the Secretary, HUD, the HA and the Contractor each agree to comply with the following provisions:

10.1 Remedies for Contractor Breach: Pertaining to contract-related issues, it is the responsibility of both the HA 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 HA 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 (please note that the HA has the right to issue unilateral addendums to this contract, but the contractor does not have the same right). The other party shall, within 10 days, respond in writing to the other party (however, the HA shall retain the right to, if conditions warrant, require the contractor to respond in a shorter period of time). Further, the HA shall, at a minimum, employ the following steps in dealing with the contractor as to any performance issues:

10.1.1 If the Contractor is in material breach of the contract, the HA may promptly invoke the termination clause detailed within Section No. 3 of Appendix No. 1, Form HUD 5370-C (10/2006), *General Conditions for Non-Construction Contracts, Section 1- (With or Without Maintenance Work)*, which is attached hereto, 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.

10.1.2 Prior to termination, the HA may choose to warn the contractor, verbally or in writing, of any issue of non-compliant or unsatisfactory performance. Such a 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 HA 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 HA's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the HA's alleged incorrect action(s).

10.1.3 After termination, if the contractor does not agree with the HA'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 HA's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the HA's alleged incorrect action(s).

10.1.4 The response to any protest received shall be conducted in accordance with Section No. 4.0 of the *Instructions to Proposers and Contractors* document.

10.2 Termination for Cause and Convenience: As detailed within Clause No. 3 of Attachment G-1, Form HUD 5370-C (10/2006), *General Conditions for Non-Construction Contracts, Section 1-(Within or Without Maintenance Work)*, attached hereto.

10.3 Executive Order 11246: For all construction contracts awarded more than \$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).

10.4 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)

10.5 Davis-Bacon-Act: For all construction contracts awarded more than \$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)

10.6 Section 103 and 107 of the Contract Work Hours and Safety Standards Act: For all construction contracts awarded in excess of \$2,000 and for other contracts, which involve the employment of mechanics or laborers awarded in excess of \$2,500, both parties hereby agree to comply with the Sections 103 and 107 of the Contract Work Hours and Safety Act (40 U.S.C 327-330) as supplemented in Department of Labor Regulations (29 CFR Part 5)

- 10.7 Reporting:** Both parties hereby agree to comply with any reporting requirements that may be detailed herein.
- 10.8 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
- 10.9 Copy Rights/ Rights in Data:** In addition to the requirements contained within Clause No.5 of Attachment G-1, *General Conditions for Non-Construction Contracts, Section 1-(With or without Maintenance Work)*, the HA has unlimited rights to any data, including computer software, developed by the contractor in the performance of the contract specifically:
- 10.9.1** Except as provided elsewhere in this clause, the HA shall have unlimited rights in data first produced in the performance of this contract; form, fit, and function data delivered under this contract; data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and all other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software.
- 10.9.2** The contractor shall have the right to: use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the contractor in the performance of this contract, unless provided otherwise in this clause; protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in this clause; substantiate use of; add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action in accordance with this clause; and establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided below.
- 10.10 Access to Records:** Both parties hereby guarantee access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transmissions
- 10.11 Record Retention:** Both parties hereby guarantee retention of all required records for three records after grantees or subgrantees make final payments and all other pending matters are closed.
- 10.12 Clean Air Act:** For all contracts more than \$100,000, both parties hereby agree to comply with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C 1857(h), Section 508 of the Clean Water Act (33 U.S.C 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

10.13 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).

11.0 Additional Considerations:

11.1 Right of Joinder Pursuant to NRS 332.195:

11.1.1 Any political subdivision within the State of Alabama may be granted the privilege of joining the awarded contract, only at the option of the Contractor. If the Contractor so grants such a privilege, the terms, and conditions of these documents, including the ensuing contract, may be passed on to the joining political subdivision by the Contractor.

11.1.2 The Contractor shall retain the unilateral right to all or disallow any political subdivision the privilege of joining the awarded contract. In the event the Contractor allows another political subdivision to join the HA contract, it is expressly understood that the HA shall in no way be liable for the joining political subdivision obligations to the Contractor in any manner whatsoever.

11.2 Non-Escalation: Unless otherwise specified within the documents, the unit prices reflected on the contract shall remain firm with no provision for price increases during the term of the contract.

11.3 Funding Restrictions and Order Quantities: The HA reserves the right to reduce or increase estimated or actual quantities in whatever amount necessary without prejudice or liability to the HA, if:

11.3.1 funding is not available

11.3.2 legal restrictions are placed upon the expenditure of monies for this category of service or supplies; or,

11.3.3 the HA's requirements in good faith change after award of the contract

11.4 Unless otherwise stated in the documents, all local, State or Federal permits which may be required to provide the services ensuing from award of this contract, whether or not they are known to either the HA or the proposers at the time of the proposal submittal deadline or the award, shall be the sole responsibility of the contractor and any costs that were submitted by the Contractor in response to the RFP shall reflect all costs required by the Contractor to procure and provide such necessary permits.

11.5 Taxes: All persons doing business with the HA are hereby made aware that the HA is exempt from paying State Sales and Use Taxes and Federal Excise Taxes. A letter of Tax Exemption will be provided upon request.

11.6 Government Standards: It is the responsibility of the proposer to ensure that all items and services proposed conform to all local, State, and Federal law concerning safety (OSHA and NIOSH) and environmental control (EPA) and any other enacted ordinance, code, law, or regulation. The Contractor shall be responsible for all costs incurred for compliance with any such possible ordinance, code, law, or regulation. No time extensions shall be granted, or financial consideration given to the Contractor for time or monies lost due to violations of any such ordinance, code, law, or regulations that may occur.

11.7 Freight on bill and delivery: All costs submitted by the proposer shall reflect the cost of delivering the proposed items and/or services to the location(s) specified within the RFP documents or within the contract.

11.7.1 The Contractor agrees to deliver to the designated location(s) on or before the date specified in the finalized contract. Failure to deliver on or before the specified date constitutes an event of default by the Contractor. Upon default, the Contractor agrees that the HA may, at its option, rescind the finalized contract under the default clause herein and seek compensatory damages as provided by law.

11.8 Backorders:

11.8.1 The CO must be notified in writing by the contractor within 10 days of any and all backordered materials and/or any complete services; and the estimated delivery date

11.8.2 Unless otherwise stipulated in the contract, any order that will take more than a maximum of 10 days past the original agreed upon delivery date, may at the option of the HA, be canceled and ordered from another source, if, in the opinion of the CO, it is in the best interests of the HA to do so

11.9 Work on HA Property: If the Contractor's work under the contract involves operations by the Contractor on HA premises, the Contractor shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work and, except to the extent that any such injury is caused solely and directly by the HA's negligence, shall indemnify the HA, and their officers, agents, servants and employees against all loss which may result in any way from any act or omission of the Contractor, its agents, employees, or subcontractors.

- 11.10 Official, Agent and Employees of the HA Not Personally Liable:** It is agreed by and between the parties hereto that in no event shall any official , officer, employee', or agent of the HA in any way be personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this agreement.
- 11.11 Subcontractors:** Unless otherwise stated within the documents, the Contractor may not use any subcontractors to accomplish any portion of the services described within the RFP documents or the contract without the prior written permission of the CO.
- 11.12 Salaries and Expenses Relating to the Contractors Employees:** Unless otherwise stated within the documents, the Contractor shall pay all salaries and expenses of and all Federal, Social Security taxes, Federal and State Unemployment taxes, and any similar taxes relating to its employees used in the performance of the contract. The Contractor further agrees to comply with all Federal, State, and local wage and hour laws and all licensing laws applicable to its employees or other personnel furnished under this agreement.
- 11.13 Attorney's Fees:** If litigation is commenced by one party hereto against the other in connection with the enforcement of any provision of this agreement, the prevailing party shall be paid by the losing party all court costs and other expenses of such litigation, including reasonable attorneys' fees, The amount allowed as attorneys' fees shall be taxed to the losing party as costs of the suit unless prohibited by law.
- 11.14 Independent Contractor:** Unless otherwise stated within the documents or the contract, the Contractor is an independent contractor. Nothing herein shall create any association, agency, partnership, or joint venture between the parties hereto and neither shall have any authority to bind the other in any way.
- 11.15 Severability:** If any provision of this agreement or any portion or provision hereof applicable to any situation or circumstance is held valid, the remainder of this agreement to the remainder of such provision (as the case may be), and the application thereof to other situations or circumstances shall not be affected thereby.
- 11.16 Waiver of Breach:** A Waiver of either party of any terms or condition of this agreement in any instance shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this agreement shall be cumulative and neither of them shall be the limitation of any other remedy, right, obligation or agreement of either party.
- 11.17 Time of the Essence:** Time is of the essence under this agreement as to each provision in which time of performance is a factor

11.18 Limitation of Liability: The HA along with the Contractor shall be mutually liable for any indirect, incidental, consequential, or exemplary damages.

11.19 Indemnification:

11.19.1 The Contractor shall indemnify, defend, and hold the HA (and its officers, employees, and agents) harmless from and against any and all claims, damages, losses, suits, actions, decrees, judgements, attorney's fees, court costs and other expenses of any kind or character, which are caused by, arise out of, or occur due to any failure of the Contractor to (1) abide by any of the applicable professional standards within its industry, or (2) comply with the terms, conditions, or covenants that are contained in this contract, (3) ensure that all contractors abide by the terms of this provision and this contract; provided, however, that Contractor will not be required to indemnify the HA against any loss or damage which was specifically caused by the HA providing inaccurate information to the Contractor, filing to provide necessary and requested information to the Contractor, or refusal to abide by any recommendation of the Contractor.

11.19.2 In this connection, it is expressly agreed that the Contractor shall, at its own expense, defend the HA, its officers, employees, and agents, against any and all claims, suits or actions which may be brought against them, or any of them, as a result of, or by reason of, or arising out of, or on account of, or in consequence of any act or failure to act the consequences of which the Contractor has indemnified the HA. If the Contractor shall fail to do so, the HA shall have the right, but not the obligation, to defend the same and to change all direct and incidental costs of such defense to the Contractor including attorney's fees and court costs.

11.19.3 Any money due to the Contractor under and by virtue of this contract, which the HA believes must be withheld from the Contractor to protect the HA, may be retained by the HA so long as it is reasonably necessary to ensure the HA's protection; or in case no money is due, its surety may be held until all applicable claims have been settled and suitable evidence to that effect furnished to the HA provided, however, neither the Corporation's payments shall not be withheld, and its surety shall be released, if the Contractor is able to demonstrate that it has adequate liability and property damage insurance to protect the HA from any potential claims.

11.19.4 The Contractor shall provide that any contractual arrangement with a subcontractor shall be in conformance with the terms of this Contract including the terms of this indemnity provision. The Contractor guarantees that it will promptly handle and rectify any and all claims for materials, supplies, and labor, or any other claims that may be made against it or any of its subcontractors in connection with the contract.

12.20 Lobbying Certification: By execution of this contract with the HA the Contractor thereby certifies, to the best of his or her knowledge and belief, that:

12.20.1 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 Federal contract, the making of any Federal loan, the entering into any cooperative agreement, or modification of any Federal contract, grant, loan, or cooperative agreement.

12.20.2 If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, Disclosure Form to report Lobbying, in an accordance with its instructions.

12.20.3 The Contractor 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.

12.21 Additional Federally Required Orders/Directives: Both parties agree that they will comply with the following laws and directives, where applicable

12.21.1 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.

12.21.2 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 HA hereby extends this requirement to the Contractor and its private contractors. Specific prohibited discriminatory actions and corrective actions are described in Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 19901 et. Seq.)

12.21.3 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 HA requires that the Contractor administer all programs and activities, which are related to housing and community development in such a manner as affirmatively to further fair housing.
- 12.21.4 The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age
- 12.21.5 Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et seq)
- 12.21.6 HUD Information Bulletin 909-23 which is the following:
- 12.21.6.1 Notice of Assistance Regarding Patent and Copyright Infringement
 - 12.21.6.2 Clean Air and Water Certification; and,
 - 12.21.6.3 Energy Policy and Conservation Act
- 12.21.7 That the funds that are provided by the HA 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.
- 12.21.8 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.
- 12.21.9 The mention herein of any statute or Executive Order is not intended as an indication that such statute or Executive Order is necessarily applicable not is the failure to mention any statute or Executive Order intended as an indication that such statute or Executive Order is not applicable. In this connection, therefore each provision of law and each clause, which is required by law to be inserted in this agreement, shall be deemed to have been inserted herein, and in this agreement 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 agreement shall forthwith be physically amended to make such insertion or correction upon the application of either part.

13.0 Appendices:

13.1 The following noted documents are placed under each of the noted appendix and are a part of this contract:

13.1.1 Appendix No. 1: Form HUD 5370-C (10/2006), *General Condition for Non- Construction Contracts, Section 1-(With or Without Maintenance Work)*, aka Attachment G-1 of the RFP document:

13.1.2 Appendix No. 2: Scope of Services, as agreed upon by negotiation between the HA and the Contractor;

13.1.3 Appendix No. 3: The proposed fee(s) submitted by this contractor in response to the RFP, or any negotiated fee(s) that resulted thereto, which fee(s) shall apply to each procurement that ensues from this contract;

13.1.4 Included by reference is any document or clause as a part of RFP 2024-1104- that the HA may choose to include at any time during the performance of this contract or any options exercised thereto by the HA. 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 HA upon written request for such from the contractor.

13.2 Please note that, in the case of any discrepancy between this contract and any of the above noted appendices, the requirement(s) detailed within each appendix shall take precedence in the order that they are listed above (meaning, the requirement(s) detailed within the lower listed item may not overrule any requirement(s) detailed within a higher listed item)

14.0 **Certifications:** The undersigned representative of each party hereby acknowledges by signature below that they have reviewed the foregoing and understand and agree to abide by their respective obligations as defined herein:

Sample

By: _____ Date: _____

Alexander City Housing Authority and Properties Managed by the Alexander City HA:

By: _____ Date: _____

Darold Sterling, Executive Director

Certifications and Representations of Offerors

Non-Construction Contract

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

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

1. Contingent Fee Representation and Agreement

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

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

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

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

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

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

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

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

(Check the block applicable to you)

- | | |
|---|---|
| <input type="checkbox"/> Black Americans | <input type="checkbox"/> Asian Pacific Americans |
| <input type="checkbox"/> Hispanic Americans | <input type="checkbox"/> Asian Indian Americans |
| <input type="checkbox"/> Native Americans | <input type="checkbox"/> Hasidic Jewish Americans |

3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

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

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

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

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

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

4. Organizational Conflicts of Interest Certification

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

(i) Award of the contract may result in an unfair competitive advantage;

(ii) The Contractor's objectivity in performing the contract work may be impaired; or

(iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.

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

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

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

5. Authorized Negotiators (RFPs only)

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

6. Conflict of Interest

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

7. Offeror's Signature

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

Signature & Date:

Typed or Printed Name:

Title:

Instructions to Offerors Non-Construction

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



- 03291 -

1. Preparation of Offers

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

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

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

2. Submission of Offers

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

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

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

3. Amendments to Solicitations

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

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

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

4. Explanation to Prospective Offerors

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

5. Responsibility of Prospective Contractor

(a) The HA shall award a contract only to a responsible prospective contractor who is able to perform successfully under the terms and conditions of the proposed contract. To be determined responsible, a prospective contractor must -

- (1) Have adequate financial resources to perform the contract, or the ability to obtain them;

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

(b) Before an offer is considered for award, the offeror may be requested by the HA to submit a statement or other documentation regarding any of the foregoing requirements. Failure by the offeror to provide such additional information may render the offeror ineligible for award.

6. Late Submissions, Modifications, and Withdrawal of Offers

(a) Any offer received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it -

- (1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
- (2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the HA/ HUD that the late receipt was due solely to mishandling by the HA/ HUD after receipt at the HA;
- (3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays; or
- (4) Is the only offer received.

(b) Any modification of an offer, except a modification resulting from the HA's request for "best and final" offer (if this solicitation is a request for proposals), is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.

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

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

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

(f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

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

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

7. Contract Award

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

(b) The HA may

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

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

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

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

8. Service of Protest

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

9. Offer Submission

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

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

[Describe bid or proposal preparation instructions here:]

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

OMB Approval No. 2577-0157 (exp.3/31/2010)

**Model Form of Agreement Between
Owner and Design Professional**

Model Form of Agreement Between Owner and Design Professional

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

OMB Approval No. 2577-0157
(exp. 3/31/2010)

Public reporting burden for this collection of information is estimated to average 3 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. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

These contracts between a HUD grantee (housing agency (HA)) and an architect/engineer (A/E) for design and construction services do not require either party to submit any materials to HUD. The forms provide a contractual agreement for the services to be provided by the A/E and establishes responsibilities of both parties pursuant to the contract. The regulatory authority is 24 CFR 85.36. These contractual agreements are required by Federal law or regulation pursuant to 24 CFR Part 85.36. Signing of the contracts is required to obtain or retain benefits. The contracts do not lend themselves to confidentiality.

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Introduction to Agreement

Agreement

made as of the _____ day of _____ in the year (yyyy) of _____

Between the **Owner** (Name & Address)

and the **Design Professional** (Name, Address and Discipline)

For the following **Project** (Include detailed description of Project, Location, Address, Scope and Program Designation)

The Owner and Design Professional agree as set forth below.

Article A: Services

A 1.0 Design Professional's Basic Services

A. 1.1 Areas of Professional's Basic Services. Unless revised in a written addendum or amendment to this Agreement, in planning, designing and administering construction or rehabilitation of the Project, the Design Professional shall provide the Owner with professional services in the following areas:

- o Architecture
- o Site Planning
- o Structural Engineering
- o Mechanical Engineering
- o Electrical Engineering
- o Civil Engineering
- o Landscape Architecture
- o Cost Estimating
- o Construction Contract Administration

A 1.2 Phases and Descriptions of Basic Services.

A. 1.2.1 Schematic Design/Preliminary Study Phase. After receipt of a Notice to Proceed from the Owner, the Design Professional shall prepare and deliver Schematic Design/Preliminary Study Documents. These documents shall consist of a presentation of the complete concept of the Project, including all major elements of the building(s), and site design(s), planned to promote economy both in construction and in administration and to comply with current program and cost limitations. The Design Professional shall revise these documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval. Additionally, the Design Professional shall make an independent assessment of the accuracy of the information provided by the Owner concerning existing conditions. Documents in this phase shall include:

- o Site plan(s)
- o Schedule of building types, unit distribution and bedroom count
- o Scale plan of all buildings, and typical dwelling units
- o Wall sections and elevations
- o Outline specifications
- o Preliminary construction cost estimates
- o Project specific analysis of codes, ordinances and regulations
- o Three dimensional line drawings

A. 1.2.2 Design Development Phase. After receipt of written approval of Schematic Design/Preliminary Study Documents, the Design Professional shall prepare and submit to the Owner Design Development Documents. The Design Professional shall revise these documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval. These documents shall include the following:

- o Drawings sufficient to fix and illustrate project scope and character in all essential design elements
- o Outline specifications
- o Cost estimates and analysis
- o Recommendations for phasing of construction
- o Site plan(s)
- o Landscape plan
- o Floor plans
- o Elevations, building and wall sections
- o Updated three dimensional line drawings
- o Engineering drawings

A. 1.2.3 Bidding, Construction and Contract Document Phase. After receipt of the Owner's written approval of Design Development Documents, the Design Professional shall prepare Construction Documents. After consultation with the Owner and Owner's attorney, if requested by the owner, the Design Professional shall also prepare and assemble all bidding and contract documents. The Design Professional shall revise these Bidding, Construction and Contract documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval. They shall, include in a detailed, manner all work to be performed; all material; workmanship; finishes and equipment required for the architectural, structural, mechanical, electrical, and site work; survey maps furnished by Owner; and direct reproduction of any logs and subsurface soil investigations. These documents shall include:

- o Solicitation for Bids
- o Form of Contract
- o Special Conditions
- o General Conditions
- o Technical Specifications
- o Plans and drawings
- o Updated cost estimates

A. 1.2.4 Bidding and Award Phase. After written approval of Bidding, Construction and Contract Documents from the Owner, the Design Professional shall assist in administering the bidding and award of the Construction Contract. This shall include:

- o Responding to inquiries
- o Drafting and issuing addendum approved by Owner
- o Attending prebid conference(s)
- o Attending public bid openings
- o Reviewing and tabulating bids
- o Recommending list of eligible bids
- o Recommending award
- o Altering drawings and specifications as often as required to award within the Estimated Construction Contract Cost

A. 1.2.5 Construction Phase. After execution of the Construction Contract, the Design Professional shall in a prompt and timely manner administer the Construction Contract and all work required by the Bidding, Construction and Contract Documents. The Design Professional shall endeavor to protect the Owner against defects and deficiencies in the execution and performance of the work. The Design Professional shall:

- o Administer the Construction Contract.
- o Conduct pre-construction conference and attend dispute resolution conferences and other meetings when requested by the Owner.
- o Review and approve contractor's shop drawings and other submittals for conformance to the requirements of the contract documents.
- o At the Owner's written request, and as Additional Service, procure testing from qualified parties.
- o Monitor the quality and progress of the work and furnish a written field report weekly, semi monthly, monthly, or _____. This service shall be limited to a period amounting to 110% of the construction period as originally established under the construction contract unless construction has been delayed due to the Design professional's failure to properly perform its duties and responsibilities. The Owner may direct additional monitoring but only as Additional Services.
- o Require any sub-consultant to provide the services listed in this section where and as applicable and to visit the Project during the time that construction is occurring on the portion of the work related to its discipline and report in writing to the Design Professional.
- o Review, approve and submit to Owner the Contractor Requests for Payment.
- o Conduct all job meetings and record action in a set of minutes which are to be provided to the Owner.
- o Make modifications to Construction Contract Documents to correct errors, clarify intent or to accommodate change orders.
- o Make recommendations to Owner for solutions to special problems or changes necessitated by conditions encountered in the course of construction.
- o Promptly notify Owner in writing of any defects or deficiencies in the work or of any matter of dispute with the Contractor.
- o Negotiate, prepare cost or price analysis for and counter-sign change orders.
- o Prepare written punch list, certificates of completion and other necessary construction close out documents.
- o Prepare a set of reproducible record prints of Drawings showing significant changes in the work made during construction, including the locations of underground utilities and appurtenances referenced to permanent surface improvements, based on marked-up prints, drawings and other data furnished by the contractor to the Design Professional.

A. 1.2.6 Post Completion/Warranty Phase. After execution of the Certificate of Completion by the Owner, the Design Professional shall:

- o Consult with and make recommendations to Owner during warranties regarding construction, and equipment warranties.
- o Perform an inspection of construction work, material, systems and equipment no earlier than nine months and no later than ten months after completion of the construction contract and make a written report to the Owner. At the Owner's request, and by Amendment to the Additional Services section of this contract, conduct additional warranty inspections as Additional Services.
- o Advise and assist Owner in construction matters for a period up to eighteen months after completion of the project, but such assistance is not to exceed forty hours of service and one nonwarranty trip away from the place of business of the Design Professional.

A. 1.3 Time of Performance. The Design Professional's schedule for preparing, delivering and obtaining Owner's approval for Basic Services shall be as follows:

- o Schematic Design/Preliminary Study Documents within _____ calendar days for the date of the receipt of a Notice to Proceed.
- o Design Development Documents within _____ calendar days from the date of receipt of written approval by the Owner of Schematic Design/Preliminary Study documents.
- o Bidding, Construction and Contract Documents within _____ calendar days from the date of receipt of written approval by the Owner of Design Development Documents.

A. 2.0 Design Professional's Additional Services

A. 2.1 Description of Additional Services. Additional Services are all those services provided by the Design Professional on the Project for the Owner that are not defined as Basic Services in Article A, Section 1.2 or otherwise required to be performed by the Design Professional under this Agreement. They include major revisions in the scope of work of previously approved drawings, specifications and other documents due to causes beyond the control of the Design Professional and not due to any errors, omissions, or failures on the part of the Design Professional to carry out obligations otherwise set out in this Agreement.

A. 2.2 Written Addendum or Contract Amendment. All additional services not already expressly required by this agreement shall be agreed to through either a written addendum or amendment to this Agreement.

Article B: Compensation and Payment

B. 1.0 Basic Services

B. 1.1 Fixed Fee for Basic Services. The Owner will pay the Design Professional for Basic Services performed as defined by A.1.2, a Fixed Fee (stipulated sum) of \$ _____ plus Reimbursable Expenses identified in Article B.2.0. Such

payment shall be compensation for all Basic Services required, performed, or accepted under this Contract.

B. 1.2 Payment Schedule. Progress payments for Basic Services for each phase of work shall be made in proportion to services performed as follows:

Phase	Amount
Schematic Design/Preliminary Study Phase	\$ _____
Design Development Phase	\$ _____
Bidding, Construction & Contract Document Phase	\$ _____
Bidding & Award Phase	\$ _____
Construction Phase	\$ _____
Post Completion/ Warranty Phase	\$ _____
Total Basic Services	\$ _____

B. 2.0 Reimbursables

B. 2.1 Reimbursable Expenses. The Owner will pay the Design Professional for the Reimbursable Expenses listed below up to a Maximum Amount of \$ _____. Reimbursable Expenses are in addition to the Fixed Fee for Basic Services and are for certain actual expenses incurred by the Design Professional in connection with the Project as enumerated below.

B. 2.1.1 Travel Costs. The reasonable expense of travel costs incurred by the Design Professional when requested by Owner to travel to a location that lies outside of a 45 mile radius of either the Project site, Design Professional's office (s), and Owner's office.

B. 2.1.2 Long Distance Telephone Costs. Long distance telephone calls and long distance telefax costs.

B. 2.1.3 Delivery Costs. Courier services and overnight delivery costs.

B. 2.1.4 Reproduction Costs. Reproduction and postage costs of required drawings, specifications, Bidding and Contract documents, excluding the cost of reproductions for the Design Professional or Subcontractor's own use.

B. 2.1.5 Additional Reimbursables. The Design Professional and Owner may agree in an addendum or amendment to this Agreement to include certain other expenses not enumerated above as Reimbursable Expenses. These Reimbursables shall not be limited by the Maximum Amount agreed to above. A separate Maximum Amount for these Reimbursables shall be established.

B. 3.0 Additional Services

B. 3.1 Payment for Additional Services. The Owner will pay the Design Professional only for Additional Services agreed to in an addendum or amendment to this Agreement executed by the Owner and the Design Professional pursuant to A.2. Payment for all such Additional Services shall be in an amount and upon the terms set out in such amendment or addendum and agreed upon by the parties. Each such amendment or addendum shall provide for a fixed price or, where payment for such Additional Services is to be on an hourly basis or other unit pricing method, for a

maximum amount; each such amendment or addendum shall also provide for a method of payment, including, at a minimum, whether payment will be made in partial payments or in lump sum and whether it will be based upon percentage of completion or services billed for.

B. 4.0 Invoicing and Payments

B. 4.1 Invoices. All payments shall require a written invoice from the Design Professional. Invoices shall be made no more frequently than on a monthly basis. Payments for Basic Services shall be in proportion to services completed within each phase of work. When requesting such payment, the invoice shall identify the phase and the portion completed. All invoices shall state the Agreement, name and address to which payment shall be made, the services completed and the dates of completion, and whether the invoice requests payment for Basic Services, Reimbursable or Additional Services. Invoices seeking payment for Reimbursable or Additional Services must provide detailed documentation.

B. 4.2 Time of Payment. Upon the Design Professional's proper submission of invoices for work performed or reimbursable expenses, the Owner shall review and, if the work is in conformance with the terms of the Agreement, make payment within thirty days of the Owner's receipt of the invoice.

Article C: Responsibilities

C. 1.0 Design Professional's Responsibilities

C. 1.1 Basic Services. The Design Professionals shall provide the Basic Service set out in Article A.1.0.

C. 1.2 Additional Services. When required under this Agreement or agreed to as set out in A.2.0, the Design Professional shall provide Additional Services on the Project.

C. 1.3 General Responsibilities. The Design Professional shall be responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other services, furnished by the Design Professional under this Agreement. The Owner's review, approval, acceptance of, or payment for Design Professional services shall not be construed as a waiver of any rights under this Agreement or of any cause of action for damages caused by Design Professional's negligent performance under this Agreement. Furthermore, this Agreement does not restrict or limit any rights or remedies otherwise afforded the Owner or Design Professional by law.

C. 1.4 Designing Within Funding Limitations. The Design Professional shall perform services required under this Contract in such a manner so as to cause an award of a Construction Contract(s) that does not exceed (1) \$ _____ or (2) an amount to be provided by the Owner in writing to the Design Professional prior to the commencement of Design Professional services. This fixed limit shall be called the Maximum Construction Contract Cost. The amount may be increased by the Owner, but only with written notice to the Design Professional. If the increase results in a change to the scope of work, an amendment to this Agreement will be required. The Design Professional and the Owner may mutually agree to decrease the Maximum Construction Contract Cost, but only by signing a written amendment to this Agreement. Should bids for the Construction Contract(s) exceed the Maximum Construction Contract Cost, the Owner has the right to require the Design Profes-

sional to perform redesigns, rebids and other services necessary to cause an award of the Construction Contract within the Maximum Construction Contract Cost without additional compensation or reimbursement.

C. 1.5 Compliance with Laws, Codes, Ordinances and Regulations. The Design Professional shall perform services that conform to all applicable Federal, State and local laws, codes, ordinances and regulations except as modified by any waivers which may be obtained with the approval of the Owner. If the Project is within an Indian reservation, tribal laws, codes and regulations shall be substituted for state and local laws, codes, ordinances and regulations. However, on such a Native American Projects, the Owner may additionally designate that some or all state and local codes shall apply. In some of these circumstances, a model national building code may be selected by the Indian or Native American Owner. The Design Professional shall certify that Contract Documents will conform to all applicable laws, codes, ordinances and regulations. The Design Professional shall prepare all construction documents required for approval by all governmental agencies having jurisdiction over the project. The Design professional shall make all changes in the Bidding and Construction Documents necessary to obtain governmental approval without additional compensation or reimbursement, except in the following situations. If subsequent to the date the Owner issues a notice to proceed, revisions are made to applicable codes or non-federal regulations, the Design Professional shall be entitled to additional compensation and reimbursements for any additional cost resulting from such changes. The Design Professional, however, is obligated to notify the Owner of all significant code or regulatory changes within sixty (60) days of their change, and such notification shall be required in order for the Design Professional to be entitled to any additional compensation or reimbursement.

C. 1.6 Seal. Licensed Design Professionals shall affix their seals and signatures to drawings and specifications produced under this Agreement when required by law or when the project is located on an Indian Reservation.

C. 1.7 Attendance at Conferences. The Design Professional or designated representative shall attend project conferences and meetings involving matters related to basic services covered under this contract. Attendance at community wide meetings shall be considered an additional service.

C. 2.0 Owner's Responsibilities

C. 2.1 Information. The Owner shall provide information regarding requirements for the project, including a program that shall set forth the Owner's objectives and schedule. The Owner shall also establish and update the Maximum Construction Cost. This shall include the Owner's giving notice of work to be performed by the Owner or others and not included in the Construction Contract for the Project. The Design Professional, however, shall be responsible to ascertain and know federal requirements and limitations placed on the Project.

C. 2.2 Notice of Defects. If the Owner observes or otherwise becomes aware of any fault or defect in the construction of the project or nonconformance with the Construction Contract, the Owner shall give prompt written notice of those faults, defects or nonconformance to the Design Professional.

C.2.3 Contract Officer. The Owner shall designate a Contract Officer authorized to act on its behalf with respect to the design and construction of the Project. The Contract Officer shall examine documents submitted by the Design Professional and shall promptly render decisions pertaining to those documents so as to avoid unreasonably delaying the progress of the Design Professional's work.

C. 2.4 Duties to Furnish. The Owner shall provide the Design Professional the items listed below.

C. 2.4.1 Survey and Property Restrictions. The Owner shall furnish topographic, property line and utility information as and where required. The Owner may at its election require the Design Professional to furnish any of these items as an Additional Service.

C. 2.4.2 Existing Conditions. The Owner shall provide the Design Professional any available "as built" drawings of buildings or properties, architect surveys, test reports, and any other written information that it may have in its possession and that it might reasonably assume affects the work.

C. 2.4.3 Waivers. The Owner shall provide the Design Professional information it may have obtained on any waivers of local codes, ordinances, or regulations or standards affecting the design of the Project.

C. 2.4.4 Minimum Wage Rates. The Owner shall furnish the Design Professional the schedule of minimum wage rates approved by the U.S. Secretary of Labor for inclusion in the solicitation and Contract Documents.

C. 2.4.5 Tests. When expressly agreed to in writing by both the Owner and the Design Professional, the Owner shall furnish the Design Professional all necessary structural, mechanical, chemical or other laboratory tests, inspections and reports required for the Project.

C. 2.4.6 Contract Terms. The Owner or its legal counsel may provide the Design Professional text to be incorporated into Bidding and Construction Contract Documents.

Article D: Contract Administration

D. 1.0 Prohibition of Assignment. The Design Professional shall not assign, subcontract, or transfer any services, obligations, or interest in this Agreement without the prior written consent of the Owner. Such consent shall not unreasonably be withheld when such assignment is for financing the Design Professional's performance.

D. 1.1 Ownership of Documents. All drawings, specifications, studies and other materials prepared under this contract shall be the property of the Owner and at the termination or completion of the Design Professional's services shall be promptly delivered to the Owner. The Design Professional shall have no claim for further employment or additional compensation as a result of exercise by the Owner of its full rights of ownership. It is understood, however, that the Design Professional does not represent such data to be suitable for re-use on any other project or for any other purpose. If the Owner re-uses the subject data without the Design Professional's written verification, such re-use will be at the sole risk of the Owner without liability to the Design Professional.

D. 1.2 Substitutions.

A. The Design Professional shall identify in writing principals and professional level employees and shall not substitute or replace principals or professional level employees without the prior approval of the Owner which shall not unreasonably be withheld.

B. The Design Professional’s personnel identified below are considered to be essential to the work effort. Prior to diverting or substituting any of the specified individuals, the Design Professional shall notify the Owner reasonably in advance and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact on the contract. No diversion or substitution of such key personnel shall be made by the Design professional without the prior written consent of the Owner.

D. 1.3 Suspension. The Owner may give written notice to the Design Professional to suspend work on the project or any part thereof. The Owner shall not be obligated to consider a claim for additional compensation if the Design Professional is given written notice to resume work within 120 calendar days. If notice to resume work is not given within 120 calendar days, the Design Professional shall be entitled to an equitable adjustment in compensation.

D. 1.4 Subcontracts. The Design Professional will cause all applicable provisions of this Agreement to be inserted in all its subcontracts.

D. 1.5 Disputes. In the event of a dispute arising under this Agreement, the Design Professional shall notify the Owner promptly in writing and submit its claim in a timely manner. The Owner shall respond to the claim in writing in a timely manner. The Design Professional shall proceed with its work hereunder in compliance with the instructions of the Owner, but such compliance shall not be a waiver of the Design Professional’s rights to make such a claim. Any dispute not resolved by this procedure may be determined by a court of competent jurisdiction or by consent of the Owner and Design Professional by other dispute resolution methods.

D. 1.6 Termination. The Owner may terminate this Agreement for the Owner’s convenience or for failure of the Design Professional to fulfill contract obligations. The Owner shall terminate by delivering to the Design Professional a Notice of Termination specifying the reason therefore and the effective date of termination. Upon receipt of such notice, the Design Professional shall immediately discontinue all services affected and deliver to the Owner all information, reports, papers, and other materials accumulated or generated in performing this contract whether completed or in process. If the termination is for convenience of the Owner, the Owner shall be liable only for payment for accepted services rendered before the effective date of termination.

D. 1.7 Insurance. The Design professional shall carry Commercial or Comprehensive General Liability Insurance, Professional Liability Insurance (for a period extending two years past the date of completion of construction), and other insurance as are required by law, all in minimum amounts as set forth below. The Design Professional shall furnish the Owner certificates of insurance and they shall state that a thirty day notice of prior cancellation or change will be provided to the Owner. Additionally, the Owner shall be an additional insured on all Commercial or Comprehensive General liability policies.

Insurance	Limits or Amount
_____	_____
_____	_____
_____	_____

D. 1.8 Retention of Rights. Neither the Owner’s review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the Design Professional shall be and remain liable to the Owner in accordance with the applicable law for all damages to the Owner caused by the Design professional’s negligent performance of any of the services furnished under this contract.

Article E: Additional Requirements

E. 1.0 Contract Provisions Required by Federal Law or Owner Contract with the U.S. Department of Housing and Urban Development (HUD).

E. 1.1 Contract Adjustments. Notwithstanding any other term or condition of this Agreement, any settlement or equitable adjustment due to termination, suspension or delays by the Owner shall be negotiated based on the cost principles stated at 48 CFR Subpart 31.2 and conform to the Contract pricing provisions of 24 CFR 85.36 (f).

E. 1.2 Additional Services. The Owner shall perform a cost or price analysis as required by 24 CFR 85.36 (f) prior to the issuance of a contract modification/amendment for Additional Services. Such Additional Services shall be within the general scope of services covered by this Agreement. The Design Professional shall provide supporting cost information in sufficient detail to permit the Owner to perform the required cost or price analysis.

E. 1.3 Restrictive Drawings and Specifications. In accordance with 24 CFR 85.36(c)(3)(i) and contract agreements between the Owner and HUD, the Design Professional shall not require the use of materials, products, or services that unduly restrict competition.

E. 1.4 Design Certification. Where the Owner is required by federal regulations to provide HUD a Design Professional certification regarding the design of the Projects (24 CFR 968.235), the Design Professional shall provide such a certification to the Owner.

E. 1.5 Retention and Inspection of Records. Pursuant to 24 CFR 85.26(i)(10) and (11), access shall be given by the Design Professional to the Owner, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the Design Professional which are directly pertinent to that specific Contract for the purpose of making an audit, examination, excerpts, and transcriptions. All required records shall be retained for three years after the Owner or Design Professional and other subgrantees make final payments and all other pending matters are closed.

E. 1.6 Copyrights and Rights in Data. HUD has no regulations pertaining to copyrights or rights in data as provided in 24 CFR 85.36. HUD requirements, Article 45 of the General Conditions to the Contract for Construction (form HUD-5370) requires that contractors pay all royalties and license fees. All drawings and specifications prepared by the Design Professional pursuant to this contract will identify any applicable patents to enable the general contractor to fulfil the requirements of the construction contract.

E. 1.7 Conflicts of Interest. Based in part on federal regulations (24 CFR 85.36(b)) and Contract agreement between the Owner and HUD, no employee, officer, or agent of the Owner (HUD grantee) shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when:

- (i) The employee, officer or agent,
- (ii) Any member of his or her immediate family,
- (iii) His or her partner, or
- (iv) An organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from Contractors, or parties to sub-agreements. Grantees and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents or by Contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

Neither the Owner nor any of its contractors or their subcontractors shall enter into any Contract, subcontract, or agreement, in connection with any Project or any property included or planned to be included in any Project, in which any member, officer, or employee of the Owner, or any member of the governing body of the locality in which the Project is situated, or any member of the governing body of the locality in which the Owner was activated, or in any other public official of such locality or localities who exercises any responsibilities or functions with respect to the Project during his/her tenure or for one year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee of the Owner, or any such governing body member or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of

his/her tenure any such interest, and if such interest is immediately disclosed to the Owner and such disclosure is entered upon the minutes of the Owner, the Owner, with the prior approval of the Government, may waive the prohibition contained in this subsection: Provided, That any such present member, officer, or employee of the Owner shall not participate in any action by the Owner relating to such contract, subcontract, or arrangement.

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

E. 1.8 Disputes. In part because of HUD regulations (24 CFR 85.36(i)(1)), this Design Professional Agreement, unless it is a small purchase contract, has administrative, contractual, or legal remedies for instances where the Design Professional violates or breaches Agreement terms, and provide for such sanctions and penalties as may be appropriate.

E. 1.9 Termination. In part because of HUD regulations (24 CFR 85.36(i)(2)), this Design Professional Agreement, unless it is for an amount of \$10,000 or less, has requirements regarding termination by the Owner when for cause or convenience. These include the manner by which the termination will be effected and basis for settlement.

E. 1.10 Interest of Members of Congress. Because of Contract agreement between the Owner and HUD, no member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this Contract or to any benefit to arise from it.

E. 1.11 Limitation of Payments to Influence Certain Federal Transaction. The Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions Act, Section 1352 of Title 31 U.S.C., provides in part that no appropriated funds may be expended by recipient of a federal contract, grant, loan, or cooperative agreement to pay any person, including the Design Professional, for influencing or attempting to influence an officer or employee of Congress in connection with any of the following covered Federal actions: the awarding of any federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

E. 1.12 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 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

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

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

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

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

G. Reserved.

H. Reserved.

E. 1.13 Reserved.

E. 1.14 Clean Air and Water. (Applicable to contracts in excess of \$100,000). Because of 24 CFR 85.36(i)(12) and Federal law, the Design Professional shall comply with applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 1857h-4 transferred to 42 USC § 7607, section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15), on all contracts, subcontracts, and subgrants of amounts in excess of \$100,000.

E. 1.15 Energy Efficiency. Pursuant to Federal regulations (24 C.F.R 85.36(i)(13)) and Federal law, except when working on an Indian housing authority Project on an Indian reservation, the Design Professional shall comply with the 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 codified at 42 U.S.C.A. § 6321 et. seq.).

E. 1.16 Prevailing Wages. In accordance with Section 12 of the U.S. Housing Act of 1937 (42 U.S.C. 1437j) the Design Professional shall pay not less than the wages prevailing in the locality, as determined by or adopted (subsequent to a determination under applicable State or local law) by the Secretary of HUD, to all architects, technical engineers, draftsmen, and technicians.

E. 1.17 Non-applicability of Fair Housing Requirements in Indian Housing Authority Contracts. Pursuant to 24 CFR section 905.115(b) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, and the Fair Housing Act (42 U.S.C. 3601-3620), which prohibits discrimination based on race, color, religion, sex, national origin, handicap, or familial status in the sale or rental of housing do not apply to Indian Housing Authorities established by exercise of a Tribe's powers of self-government.

E. 1.18 Prohibition Against Liens. The Design professional is Prohibited from placing a lien on the Owner's property. This prohibition shall be placed in all design professional subcontracts.

Article F: Other Owner Requirements (if any)

(Continue on additional pages as necessary)

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

Owner

Design Professional

(Housing Authority)

(Firm)

(Signature)

(Signature)

(Print Name)

(Print Name)

(Print Title)

(Print Title)

Addendum (If any)

(Additional Services and other modifications)

This is an Addendum to a Standard Form of Agreement between Owner and Design Professional signed and dated the _____ day of _____ in the year (yyyy) of _____ between the Owner _____ and Design Professional _____ on Project _____. The parties to that Agreement agree to modify the Agreement by the above delineated Additional Services and modifications.

This Addendum is dated this _____ day of _____ in the year (yyyy) of _____.

Owner

Design Professional

(Housing Authority)

(Firm)

(Signature)

(Signature)

(Print Name)

(Print Name)

(Print Title)

(Print Title)

General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 3/31/2010)

Public Reporting Burden for this collection of information is estimated to average 0.08 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Applicability. This form HUD-5370-C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

- 1) **Non-construction contracts** (*without* maintenance) **greater than \$100,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 968.105) **greater than \$2,000 but not more than \$100,000 - use Section II;** and
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$100,000 – use Sections I and II.**

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

The following definitions are applicable to this contract:

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

2. Changes

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

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

3. Termination for Convenience and Default

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

4. Examination and Retention of Contractor's Records

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

- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
- (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:
 - (i) appeals under the clause titled Disputes;
 - (ii) litigation or settlement of claims arising from the performance of this contract; or,
 - (iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

5. Rights in Data (Ownership and Proprietary Interest)

The HA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials and documents discovered or produced by Contractor pursuant to the terms of this Contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of this Contract.

6. Energy Efficiency

The contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under this contract is performed.

7. Disputes

- (a) All disputes arising under or relating to this contract, except for disputes arising under clauses contained in Section III, Labor Standards Provisions, including any claims for damages for the alleged breach there of which are not disposed of by agreement, shall be resolved under this clause.
- (b) All claims by the Contractor shall be made in writing and submitted to the HA. A claim by the HA against the Contractor shall be subject to a written decision by the HA.
- (c) The HA shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HA's decision, shall notify the HA in writing that it takes exception to such decision, the decision shall be final and conclusive.
- (d) Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against the HA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HA that it submit a final voucher and release, whichever is earlier, then the HA's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.
- (e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the HA.

8. Contract Termination; Debarment

A breach of these Contract clauses may be grounds for termination of the Contract and for debarment or denial of participation in HUD programs as a Contractor and a subcontractor as provided in 24 CFR Part 24.

9. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the HA under the contract may be assigned to a bank, trust company, or other financial institution. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership approved by the HA.

10. Certificate and Release

Prior to final payment under this contract, or prior to settlement upon termination of this contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the HA a certificate and release, in a form acceptable to the HA, of all claims against the HA by the Contractor under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Contractor in stated amounts set forth therein.

11. Organizational Conflicts of Interest

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this contract and a contractor's organizational, financial, contractual or other interests are such that:
 - (i) Award of the contract may result in an unfair competitive advantage; or
 - (ii) The Contractor's objectivity in performing the contract work may be impaired.
- (b) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract or any task/delivery order under the contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The HA may, however, terminate the contract or task/delivery order for the convenience of the HA if it would be in the best interest of the HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the HA may terminate the contract for default.
- (d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

12. Inspection and Acceptance

- (a) The HA has the right to review, require correction, if necessary, and accept the work products produced by the Contractor. Such review(s) shall be carried out within 30 days so as to not impede the work of the Contractor. Any

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

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

13. Interest of Members of Congress

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

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

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

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

- (i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

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

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

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

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

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

(iii) Selling activities by independent sales representatives.

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

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

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

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

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

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

16. Equal Employment Opportunity

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

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to (1) employment; (2) upgrading; (3) demotion; (4) transfer; (5) recruitment or recruitment advertising; (6) layoff or termination; (7) rates of pay or other forms of compensation; and (8) selection for training, including apprenticeship.
- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the

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

17. Dissemination or Disclosure of Information

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

18. Contractor's Status

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

19. Other Contractors

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

20. Liens

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

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

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

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

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

22. Procurement of Recovered Materials

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

Alexander City Housing Authority Section 3

Section 3 Worker Certification Form

A Section 3 Worker seeking the preference in training and employment provided by this part shall certify or submit evidence to the recipient contractor or subcontractor that the person is a Section 3 Worker, as defined in Section 24 CFR 75.

Print Name

Please check at least one option:

_____ My annual income for the previous year or projected current year is below the HUD Low Income Individual Median Income (80%). I have attached a copy of the HUD income limits obtained from <https://www.huduser.gov/portal/datasets/il.html> for the year in which I comply.

_____ I am employed by a Section 3 business concern.

_____ I am a YouthBuild participant.

The status of a Section 3 worker shall not be negatively affected by a prior arrest or conviction. Nothing in this part shall be construed to require the employment of someone who meets this definition of a Section 3 worker. Section 3 workers are not exempt from meeting the qualifications of the position to be filled.

I hereby certify that the information provided by me to be true and correct and understand any falsification of any of the information could subject me to disqualification from participation and punishment under the law.

Signature

Date

Alexander City Housing Authority Section 3

SECTION 3 PERMANENT WORKFORCE FORM

This form is used to determine the Section 3 Workers already employed by the contractor.
This form may be compared to Davis -Bacon Payrolls for cross referencing purposes.

Project Name: _____ Name of Contractor: _____

Address: _____ Date: _____

Employee Name	Job Title	Certified Section 3 Worker		Monthly Salary	Salary Below 80% of Median Income	
		YES	NO		YES	NO

I certify the above employees are permanent employees of _____. I certify the above employees are on our regular monthly payroll and have their W-2 tax forms for our records. These records will be available to ACHA for the above referenced project for verification purposes. I understand that falsifying information is perjury and subject to legal ramifications.

Print Name

Signature

Date

What Projects or Contracts Does Section 3 Apply to?

Housing and Community Development Financial Assistance

Section 3 applies to housing construction, housing rehab and public infrastructure projects that receive more than \$200,000 in HUD assistance. Section 3 also applies to projects that include Lead Hazard Control and Healthy Homes assistance that exceeds \$100,000.

Public Housing Financial Assistance

Section 3 applies to any amount of assistance for development, operations and management, mixed-finance development projects, and in some cases, Rental Assistance Demonstration (RAD) and Choice Neighborhoods projects.

What Are the Goals of Section 3?

Section 3 has goals that recipients, subcontractors, contractors and subcontractors must meet. The goals are as follows:

Housing and Community Development Financial Assistance

- 25% or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers and 5% or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers.

Public Housing Financial Assistance

- 25% or more of the total number of labor hours worked by all workers in a PHA's fiscal year are Section 3 workers and 5% or more of the total number of labor hours worked by all workers in a PHA's fiscal year are Targeted Section 3 workers.

What Happens if the Section 3 Goals Are Not Met?

Recipients must report qualitative nature of Section 3 compliance efforts and the efforts of its contractors and subcontractors.

How Can I Find Section 3 Opportunities in My Area?

Contact your local and state government and public housing authority to learn more about employment, training and contracting opportunities that may be available to you in your community.

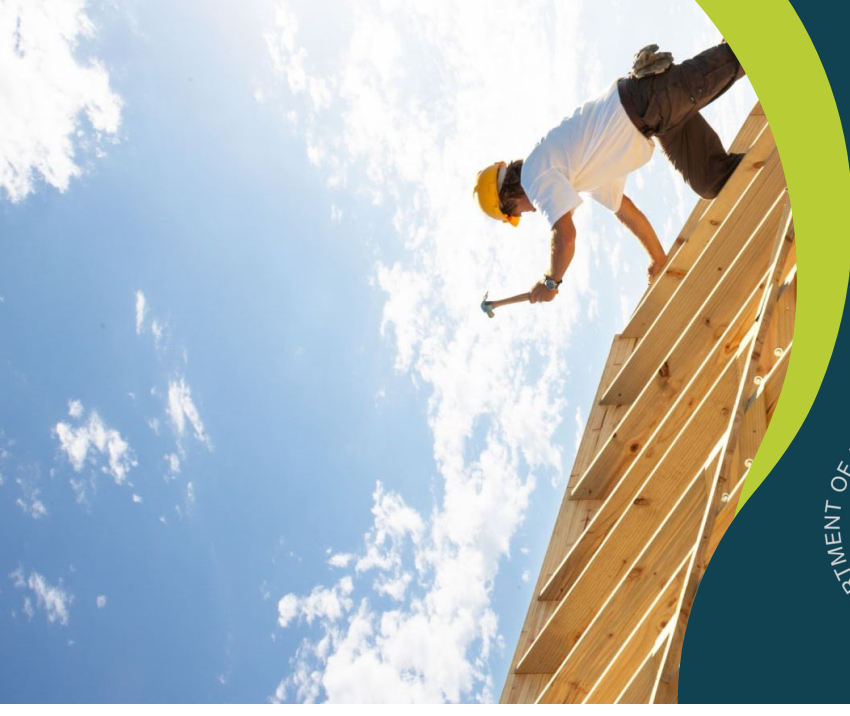
How Can I Learn More About Section 3?

Visit the following websites:

- <http://www.hud.gov/section3>
- <http://www.hudexchange.info/programs/section-3/>

Want to learn more about YouthBuild?

- <http://www.dol.gov/agencies/eta/youth/youthbuild>



SECTION 3

for Workers and Businesses

Learn about employment, training and contracting opportunities that can be available to you under Section 3.



What Is Section 3 and Why Does It Matter?

- Every year the Department of Housing and Urban Development (HUD) invests billions of federal dollars into distressed communities across the country for projects that provide **access to safe and affordable housing and improve public infrastructure**.
- These funds are passed down to public housing agencies, local and state governments or other recipients through grants or financial assistance.
- The financial assistance can be used to **maintain and build affordable housing and improve public infrastructure** in your community.
- **Employment, training and contracting** opportunities that result from the covered projects or contracts must be directed to persons who are low-income (**Section 3 workers**) and businesses that are owned by or employ persons who are low-income (**Section 3 businesses**) to help build economic wealth.
- Best efforts should be made to direct economic opportunities to persons and businesses in the **order of priority** outlined in the final rule requirements.

Who Is Responsible for Providing Access to Economic Opportunities?

- Recipients and subrecipients of HUD assistance
- Contractors and subcontractors working on certain HUD-assisted projects or contracts

How Can Contractors Help PHAs and Grantees Meet the Section 3 Goals?

Contractors can help PHAs and grantees meet the Section 3 goals by being a Section 3 business or employing Section 3 workers. Some grantees or PHAs may offer incentives to businesses that can demonstrate how they will meet the Section 3 goals.

What Is a Section 3 Worker?

A **Section 3 Worker** is any worker who currently fits, or when hired within the past five years fit, at least one of the following categories as documented:

- Person who is low-income
- Employed by a Section 3 business concern
- YouthBuild participant

What Is a Targeted Section 3 Worker?

A **Targeted Section 3 Worker** is a Section 3 worker who is **employed by a Section 3 business concern** or is a worker that currently fits or when hired fit at least **one** of the following categories as documented within the past five years:

Housing and Community Development Financial Assistance

- Lives within the neighborhood of the project
- YouthBuild participant

Public Housing Financial Assistance

- Resident of public housing or Section 8-assisted housing
- Resident of other public housing projects or Section 8-assisted housing managed by the PHA that is providing the assistance
- YouthBuild participant



What Is a Section 3 Business Concern?

A business that meets at least **one** of the following categories, within the last six-month period:

- At least 51% owned and controlled by persons who are low-income
- At least 51% owned and controlled by current public housing residents or residents who currently live in Section 8 assisted housing
- Over 75% of the labor hours performed for the business over the prior three-month period were performed by Section 3 workers



Alexander City Housing Authority Section 3

Date: _____

Section 3 Business Concern Certification Form

The purpose of this form is to comply with Section 3 of the HUD Act of 1968 Business Certification requirements. To count as a Section 3 Business your company/firm must meet one of the listed categories below. Each category will require additional documentation to support the election. You must provide that supporting documentation with this form properly completed to be confirmed as a Section 3 business. If this form is submitted without the required supplemental data, your certification will not be processed.

CATEGORY	DOCUMENTATION REQUIRED	YOUR ELECTION	
a business at least 51 percent owned by low- or very low-income persons;	Proof of ownership showing all owners and their percentages and a completed Section 3 Individual Self-Certification form for all low- and very low-income owners	<input type="checkbox"/>	←
Over 75 percent of the labor hours performed for the business are performed by low- or very low-income persons; or	Provide the last 90 days full payrolls for the entire company, make a list of the names from the payrolls of the Section 3 workers, and provide a completed Section 3 Individual Self- Certification for all low- and very low-income workers you list	<input type="checkbox"/>	
It is a business at least 51 percent owned by current public housing residents or residents who currently live in Section 8-assisted housing.	Proof of ownership showing all owners and their percentages and a Section 3 Individual Self-Certification form for all public housing and/or Section 8 owners	<input type="checkbox"/>	←
		<input type="checkbox"/>	←

I hereby certify to the US Department of Housing and Urban Development (HUD) that all of the information on this form is true and correct. I attest under penalty of perjury that my business meets the elected definition and understand proof of this information may be requested. If found to be inaccurate, I understand that I may be disqualified as a certified Section 3 business.

Full Name: _____

Company Name: _____

Street Address: _____

City: _____ State: _____ Zip: _____

Signature: _____ Date: _____

Alexander City Housing Authority Section 3

SECTION 3 CLAUSE COMPLIANCE COMMITMENT

All Section 3 covered contracts shall include the following cause (referred to as the Section 3 Clause, 24 CFR § 75.38):

- 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 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 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. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 75.
- F. 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.
- G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and sub contracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

Acknowledged:

For: _____
Company Name

By: _____

Date: _____

Alexander City Housing Authority Section 3

SECTION 3 PARTICIPATION ELECTION FORM

The purpose of Section 3 of the Housing and Urban Development Act of 1968, as in the *Federal Register* at 85 FR 61524 (codified at 24 CFR Part 75), is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, **to the greatest extent feasible**, and consistent with existing Federal, State, and local laws and regulations, be directed toward low and very low-income persons, and to businesses that provide economic opportunities to low and very low-income persons. ACHA's Section 3 Policy, which is consistent with the federal Section 3 requirements, has procedures to assist grant recipients, contractors and subcontractors in understanding and complying with Section 3 requirements. Undersigned certifies that he/she has received a copy of such policy, reviewed such policy, and is familiar with the requirements set forth therein.

How will your company fulfill its Section 3 Requirement?

___ Certified Section 3 Business (Include Certification)

___ Priority I – Employment/Training of Section 3 Workers in the priority set forth in ACHA's Section 3 Policy, Section 3C

___ Priority II – Contracting with Section 3 Businesses in the priority set forth in ACHA's Section 3 Policy, Section 3C

By signing below, the contractor hereby agrees to comply with the selected Section 3 requirements indicated above.

Name: _____

Company: _____

Address: _____

Phone No: _____

Email Address: _____

Authorized By: _____