

EXHIBIT C.1

TOUCHSTONE PROPERTY SERVICES, INC. *GENERAL TERMS AND CONDITIONS*

1. **Purpose:** This document sets out the general terms and conditions of the relationship between Contractor and TPS.

2. **Contract Term:** This Agreement shall become effective upon TPS issuing a notice of contract commencement to Contractor and shall remain in effect for a term of one year. However, TPS retains four one-year options to renew and may in its sole discretion, exercise said option(s) upon the expiration of this Agreement. However, at no time, may the term of this Agreement exceed five years. The notice of contract commencement may be delivered in the form of a letter, copy of signed contract or contract acknowledgement.
 - 2.1. **Assignment of Personnel:** TPS shall retain the right to demand and receive a change in personnel assigned to the work if TPS believes that such change is in the best interest of TPS and the completion of the contracted work.

 - 2.2. **Responsibility for Subcontractors:** All requirements for the “Prime” contractor shall also apply to any and all subcontractors. It is the Prime Contractors’ responsibility to insure the compliance by the subcontractors. At all times the Prime Contractor remains liable to the Authority for the performance and compliance of his/her subcontractors.

 - 2.3. **Unauthorized Sub-Contracting Prohibited:** The contractor shall not assign any right, nor delegate any duty for the work proposed pursuant to this contract (including, but not limited to, selling or transferring the contract) without the prior written consent of the PO. Any purported assignment of interest or delegation of duty, without the prior written consent of the PO shall be void and may result in the cancellation of the contract with TPS, or may result in the full or partial forfeiture of funds paid to the successful proposer as a result of the proposed contract; either as determined by the PO.

 - 2.4. **Termination:** TPS may only give one verbal notification to the contractor to cure deficiencies. A second notification to the contractor for deficiencies will be in writing and will clearly state that, if required, a third notification will result in termination.

 - 2.5. **Contract Service Standards/ Government Standards:** It is the responsibility of the prospective proposer to ensure that all items and services proposed conform to all local, State and Federal laws concerning safety (i.e., OSHA) and environmental control (i.e., EPA) and any other enacted ordinance, code, law or regulation. The successful proposer 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 successful proposer for time or monies lost due to violations of any such ordinance, code, law or regulations that may occur.

2.6. Public Records: All bids/proposals submitted to TPS are subject to the Ohio Public Records Law (O.R.C. 149.43 and the Sunshine Act (5 USC 522(b) and may be subject to disclosure to the public. Information in proposals that would be deemed a trade secret or otherwise not subject to disclosure under public records laws shall be clearly indicated as such by the contractor, including citations from the Ohio Public Records Law or the Sunshine Act for the exemptions. Also, the contractor shall submit one hard copy and one electronic copy of its proposal and other submissions, which has been redacted of all trade secrets and other information not subject to disclosure pursuant to a public records request. Failure to do so may subject the entire contents to disclosure under public records laws.

- 3. Scope of Services and Duties:** Contractor is engaged to provide TPS with products and or services as described in the Scope of Work as may be amended by a supplemental agreement and express written consent of both Parties. Contractor will diligently provide products or services reasonably required to represent TPS in the matters described, and will take all reasonable steps to keep TPS informed of progress and to respond to TPS's inquiries. TPS will truthfully advise Contractor of relevant facts, and reasonably cooperate with Contractor.
- 4. Mandatory HUD Terms:** Parties acknowledge and agree that *Form HUD-5370-C General Conditions for Non-Construction Contracts Section I (and Section II if applicable)* contains the mandatory terms prescribed by the United States Department of Housing and Urban Development and that said terms are incorporated into this Agreement and may not be modified or amended. Any term hereinafter, including without limitation any provisions contained in Contractor's Solicitation Response, that conflict with the terms set forth in *Form HUD-5370-C General Conditions for Non-Construction Contracts Section I (and Section II)* is void and unenforceable.

HUD Form 5370-C Section 1-5 is clarified by 2 CFR 200.315, Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards (F), and 37 CFR Part 401. Rights in Data refer to data and records which are the products produced under the contract and the only part in which TPS has ownership rights. TPS does not have rights in the existing software systems of the contractor.

- 5. Mandatory Housing Authority Terms:** Parties acknowledge and agree that these *General Terms and Conditions* contain mandatory terms as set-forth by TPS and said terms shall not be modified or amended without the express written approval of TPS's Contracting Officer and without such approval the terms as forth in these *General Terms and Conditions* are in full force and effect. Any term(s) hereinafter, including without limitation any provisions contained in Contractor's Proposal that conflict with the terms as set forth in these *General Terms and Conditions* is void and unenforceable.
- 6. Subject to Appropriation of Funds:** TPS's funds are contingent upon the availability of lawful appropriations by the United States Congress and the United States Department of Housing and Urban Development. If the United States Congress and/or the United States Department of Housing and Urban Development fail at any time to continue funding for the payments or obligation due hereunder, the Work under this Agreement that is affected by the lack of funding will terminate and TPS will have no further obligation to make payments and will be released from its obligations on the date funding expires.

6.1. TPS reserves the right to reduce or increase estimated or actual quantities in whatever amount necessary without prejudice or liability to TPS, if:

6.1.1. funding is not available;

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

6.1.3. TPS's requirements in good faith change after award of the contract.

7. Invoicing:

7.1. Contractor shall not perform any services without a Purchase Order or a Purchase Order Number. If Contractor performs services without a Purchase Order, TPS shall not be required to pay Contractor for those services or materials.

7.2. Invoices may not exceed the amount of the Purchase Order. Any invoice which exceeds the Purchase Order will be considered the same as performing services without a Purchase Order.

7.3. Invoices shall be submitted via VendorCafe after the Purchase Order has been received by TPS.

7.4. All invoices must be submitted within two weeks for services performed. No Contractor may invoice for services not rendered. Contractors violating this section may be terminated.

7.5. TPS will not pay invoices until services are fully completed as scheduled. Contractor shall provide a statement of work and signed receiver indicating the work performed and acknowledging its completion. TPS will pay properly submitted invoices in approximately 30 days.

7.6. Questions about invoices shall be sent to Finance, 1635 Western Ave., Cincinnati, OH 45214 or touchstoneap@cintimha.com. If there is any question about which entity for which the work is performed, ask the Property Manager or Maintenance Supervisor.

8. Disputed Billings (Charges):

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

8.1.1. TPS's representative shall, within 10 days after TPS'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.

8.1.2. 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.

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

8.1.3.1. pay the disputed charges and reserve the right to submit the matter to mediation, arbitration, or the appropriate court in Hamilton County, Ohio;

8.1.3.2. not pay the disputed charge and submit the matter to mediation, arbitration, or the appropriate court in Hamilton County, Ohio;

8.1.3.3. not pay the disputed charge and allow the Contractor to submit the matter either to mediation, arbitration, or the appropriate court in Hamilton County, Ohio.

8.1.4. The decision from arbitration will be binding upon both parties. If the decision is adverse to TPS, TPS shall pay TPS's receipt of the decision. If the decision is in favor of TPS, the contractor will either:

8.1.4.1. clear the amount which is ordered from TPS account;
or

8.1.4.2. repay to TPS the amount ordered.

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

9. Warranties and Representations: Contractor represents and warrants that its services provided for under the terms of this Agreement will be of good quality and consistent with the professional skill and care ordinarily provided by professionals performing the same or similar service and such services and materials shall be provided in accordance with generally accepted industry standards. Additionally, Contractor represents and warrants the following:

9.1. Contractor has the right to enter into this Agreement.

9.2. All services provided for under this Agreement are provided in accordance with the sound professional standards and the requirements of this Agreement and without any material defect.

9.3. No services or materials provided for by Contractor under this Agreement will infringe upon the intellectual property rights of any third party.

9.4. All services provided for hereunder are merchantable and fit for the particular purpose described in this Agreement.

9.5. Contractor will observe and abide by all applicable federal, state and local laws, rules, regulations, ordinances and codes and obtain any license(s), permit(s) or the like required to provide the services and materials under this Agreement. Any fees submitted by the Contractor reflect all costs required for compliance and to procure and provide such necessary licenses and permits.

9.6. Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Agreement.

If any services of Contractor or any materials or products provided for by Contractor fail to comply with these representations and/or warranties, and Contractor is so notified in writing, Contractor shall either 1) correct such failure with all due speed, or 2) shall refund the amount of compensation paid for the services, materials or products. Contractor shall also indemnify TPS for any direct damages and claims by third parties based upon a breach of these warranties.

10. **Non-Exclusivity:** This Agreement is a non-exclusive agreement. Either Party may perform or enter into agreements to perform the services and/or to provide any materials or products similar to those provided for herein so long as such agreements do not impede either Party's ability to perform under this Agreement.

11. **Indemnity:** Contractor shall indemnify and hold harmless TPS and its officers, employees and agents for any and all claims, damages, lawsuits, costs, judgments, expenses, and any other liabilities including all costs and expenses and fees of litigation that arise directly or indirectly from any acts or omissions related to this Contract performed or omitted by Contractor or its agents, and/or employees and includes, but it not limited to, claims related to breach of contract.

Contractor will also indemnify TPS and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any copyright, patent, trade secret, or similar intellectual property right based upon TPS's proper use of any products or supplies under this Contract. This obligation of indemnification will not apply where TPS has modified or misused the products or supplies and the claim of infringement is based upon the modification or misuse. TPS agrees to give Contractor notice of any such claim as soon as reasonably practicable and to give Contractor the authority to settle or otherwise defend any such claim upon consultation with and approval by CMHA's General Counsel. If a successful claim of infringement is made, or if Contractor reasonably believes that an infringement claim that is pending may succeed, Contractor shall take one of the following four actions:

11.1. Modify the service(s), material(s) and/or product(s) so that the service(s), materials(s), and/or product(s) are no longer infringing.

- 11.2. Replace material(s) and/or product(s) with an equivalent or better item.
- 11.3. Acquire the right for TPS to use the infringing service(s), material(s) and/or product(s) as intended; or
- 11.4. Cease the related service(s) and/or remove the material(s) and/or product(s) and refund any amount TPS paid for the service(s), material(s) and/or products(s) that required the availability of the infringing material(s) and/or product(s) for it to be useful to TPS.

Nothing contained in this provision shall be construed to limit any indemnity obligations of Contractor as set forth within the provisions of the Contract Documents.

It is agreed and understood that in no event shall any TPS official, officer, employee, or agent be held personally liable or responsible for any covenant or agreement whether expressed or implied.

12. Insurance: Contractor shall obtain and maintain during the performance of any services under this Agreement the following insurance and the amount of such coverage shall be in an amount to cover all indemnity obligations and shall include, but not necessarily be limited to, the following:

- 12.1. **Commercial general liability insurance**, including a contractual liability endorsement, in an amount not less than: \$1,000,000 each occurrence; \$2,000,000 general aggregate; \$50,000 damage to premises and fire damage; and \$5,000 medical expenses for any one person.
 - 12.1.1. The Authority and its affiliates must be named as an Additional Insured and as the Certificate Holder.
 - 12.1.2. Commercial General Liability Insurance shall cover premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability.
- 12.2. **Professional liability and/or “errors and omissions”** coverage with a limit not less than \$1,000,000.
 - 12.2.1. This is required for vendors who render observational services to the Authority such as appraisers, inspectors, attorneys, engineers, or consultants.
 - 12.2.2. The coverage shall be not less than \$1,000,000 each occurrence and \$1,000,000 general aggregate.
 - 12.2.3. The Authority and its affiliates must be named as an Additional Insured and be a Certificate Holder.
- 12.3. **Automobile Liability Insurance** with TPS named as an additional insured and as the Certificate Holder with minimum limits as follows: \$1,000,000 combined single limit; \$50,000/\$100,000 for vehicles utilized during the contract when not owned by the Contractor; \$5,000 medical pay.
 - 12.3.1. This is required of any contractor who will be doing hands on work at the Authority properties.

- 12.4. Workers' Compensation Insurance** as required by state statute and **Employer's Liability Insurance** covering all of Contractor's employees acting within the course and scope of this Contract.
- 12.4.1.** Worker's Compensation is required for any contractor made up of more than one person.
- 12.4.2.** Employer's Liability Insurance must cover all of Contractor's employees acting within the course and scope of this Contract. Employer's Liability limit is \$500,000 bodily injury for each accident, \$500,000 bodily injury by disease for each employee, and \$500,000 bodily injury disease aggregate. The Authority and its affiliates must be a Certificate Holder.
- 12.5.** Excess Liability Insurance (Umbrella Policy): may compensate for a deficiency in general liability or automobile insurance coverage limits.
- 12.6.** The coverages provided to TPS shall be primary and not contributing to or in excess of any existing TPS insurance coverages.
- 12.7.** The Insurance shall contain provisions preventing cancellation or non-renewal without at least 45 days' notice to TPS and stating that the carrier will waive all rights of recovery, under subrogation or otherwise, against TPS, its office, agents, employees or Board of Commissioners.
- 12.8.** Contractor shall provide certificates evidencing the coverage required under this Provision of this Agreement to TPS upon execution of this Agreement and annually thereafter evidencing renewals thereof. At any time during the term of this Agreement, TPS may request, in writing, and the Contractor shall thereupon within 10 days supply to TPS evidence satisfactory of compliance with the provision of this section.
- 12.8.1.** The Contract may be terminated if the insurance lapses.
- 12.9.** Provide evidence of deductibles. If awarded a contract, TPS may require lower deductibles depending on the risk to the Agency.
- 12.10.** Coverage required of this Contract will be primary over any insurance or self-insurance carried by TPS.
- 13. Limitation of Liability:** Notwithstanding any limitation provisions contained in the Contract Documents and materials incorporated by reference, the Parties Agree as follows:
- 13.1.** In no event shall TPS be liable for any indirect, incidental, or consequential loss or damage of any kind, including but not necessarily limited to lost profits, even if TPS had been advised, knew or should have known of the possibility of such damages.

14. Amendments: No amendment or modification of this Agreement will be effective unless it is in writing and signed by both Parties. At no time shall an amendment or modification be effective that conflicts with any mandatory provisions set forth in *Form HUD-5370-C General Conditions for Non-Construction Contracts Section I (and Section II)*.

15. Publicity: Contractor agrees to submit to TPS all advertising and publicity related matter relating to this Agreement wherein TPS's name is mentioned or language used from which the connection of TPS's name may, in TPS's judgment, be inferred or implied. Contractor shall not publish or use such advertising and publicity matters without prior express written consent of TPS.

16. Non-Waiver of Rights: If either party does not seek compensation for breach or insist upon strict performance of any provision of this Agreement, that Party is not prevented from seeking compensation or insisting upon strict performance for a future breach of the same or similar provision. Failure of TPS to take any action or assert any right hereunder shall not be deemed a waiver of such right.

17. Remedies:

17.1. Actual Damages: Contractor is liable to TPS for all actual and direct damages caused by Contractor's default. In the event Contractor fails to provide services or material as provided for in the Contract Documents, TPS may substitute the services and/or material from a third party. TPS may recover the costs associated with acquiring substitute services and/or materials, less any expense or costs saved by Contractor's default, from Contractor.

17.2. Deduction of Damages from Contract Price: Upon prior written notice being issued to the Contractor, TPS may deduct all or any part of the damages resulting from Contractor's default from any part of the price still due on this Agreement.

18. Contractor Suspension: If Contractor fails to perform any one of its obligations under the Contract Documents it will be in default and TPS, at its sole discretion, may suspend rather than terminate this Agreement when TPS believes that doing so would better serve its interest. In case of a suspension, the amount of compensation due to Contractor will be determined in the same manner as provided for in the Termination for Convenience provision set forth in *Form HUD-5370-C General Conditions for Non-Construction Contracts Section I* less any damage to TPS resulting from Contractor's breach or other default.

19. Contractor Responsibilities:

19.1. Contractor shall perform national criminal history checks for Ohio, Indiana, and Kentucky, and 10-panel drug screening tests on all prospective employees performing work under this RFP or coming onto a TPS property and any resulting contract and provide summaries of the results to the Authority if requested. For the purposes of this section, the term "employees" includes contractor. Prospective employees whose criminal background check discloses a misdemeanor or felony involving crimes of moral turpitude, sexual offenses or harm to persons or property shall not be employed to perform work under this RFP or any resulting contract. Contractor is required to perform drug screening of all employees and to ensure acceptable test results.

Criminal history and drug screening checks will be completed at the sole expense of the contractor. Any employee of the Contractor suspected of being under the influence of drugs and or alcohol will be reported to the appropriate personnel at TPS and/or other local law enforcement. If the employee is determined to be under the influence of drugs or alcohol in any form or manner, or believed by proper authority to be dealing in illicit sale of alcohol or drugs they will be removed and shall not be allowed to return to any job site on the Authority's property. The Contractor's contract may be suspended and/or terminated should such a situation occur or if the Contractor fails to submit results pursuant to this section.

19.1.1. If TPS requests additional drug screening, the test shall be performed within 24 hours and the summary shall be sent directly to TPS from the testing facility.

- 19.2.** Contractor(s) shall provide uniforms and ID Badges identifying Contractor for all employees working on TPS's properties. No employees will be allowed on TPS's properties out of uniform and without his/her ID badge on his/her person. Contractor(s) must submit a picture of the uniform and a sample of his/her ID badge if requested by TPS.
- 19.3.** Contractor's personnel shall be neat and conduct all work in a professional and efficient manner. If any employee of Contractor is deemed unacceptable by TPS, Contractor shall immediately replace such personnel with an acceptable substitute to TPS.
- 19.4.** Contractor(s) shall practice acceptable safety precautions so as not to cause harm to any persons or property while performing services under this RFP or any resulting contract. Contractor(s) shall follow industry safety standards, and use only industry approved safety equipment in accordance with the manufacturer's specifications in the performance of all duties.
- 19.5.** Contractor(s) shall pay all of its employees, including any and all approved Sub-Contractors, at least the legal minimum wages as determined by the United States Department of Labor and the United States Department of Housing and Urban Development and Department of Labor Prevailing Wage. Wage Determinations can be accessed via the Department of Labor website, www.wdol.gov.
- 19.6.** Upon completion of the work, Contractor(s) shall clean up the area where the work was performed and Contractor(s) shall remove any debris generated by the packing and moving services at TPS premises. At no time, will Contractor(s) discard debris into any TPS refuse container.
- 19.7.** Contractor(s) shall clearly mark all work areas that might reasonably be expected to endanger the health and safety of residents, guests, or any other persons. Contractor(s) will provide such signs, markers and barricades as required to identify all work areas and minimize inherent dangers.
- 19.8.** The contractor shall be responsible for notifying TPS immediately of any damages (i.e. fire, container leaking) deemed to be a health or safety hazard whether the damage is caused by the contractor or other means.

19.9. The Contractor shall be responsible for safeguarding all TPS property provided for Contractor use. At the close of each workday, TPS facilities, property and materials shall be inspected and secured.

19.10. Conservation of Utilities – The Contractor shall practice utility conservation in all TPS facilities. The Contractor shall be responsible for operating under conditions, which preclude the waste of utilities, which shall include:

- Lights shall be used only in areas where and when work is actually being performed.
- Water faucets or valves shall be turned off after the required usage has been accomplished.
- Mechanical equipment controls for heating, ventilation, and air conditioning systems shall not be adjusted by the Contractor or by Contractor’s employees.

20. Additional Considerations:

20.1. Right of Joinder; Additional Services/Purchases by Other Public Entities (“Piggy-Back”): Contractor acknowledges that other Public Entities may seek to “Piggy- Back” under the same terms and conditions, during the effective period of Agreement. The services and/or purchases being offered in the Contract Documents, Fee Submission and/or Best and Final Offer and for the same prices and/or terms proposed therein. Contractor has the option to agree or disagree to allow contract Piggy-Backs on a case-by-case basis. In the event the awarded Contractor allows another Public Agency to join the TPS Contract, it is expressly understood that TPS shall in no way be liable for the joining Public Agency obligations to the awarded Contractor in any manner whatsoever.

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

20.3. Required Permits: Unless otherwise stated in the RFP documents, all local, State or Federal permits which may be required to provide the services ensuing from award of this RFP, whether or not they are known to either TPS or the proposers at the time of the proposal submittal deadline or the award, shall be the sole responsibility of the successful proposer and any costs submitted by the proposer shall reflect all costs required by the successful proposer to procure and provide such necessary permits.

20.4. Taxes: All persons doing business with TPS are hereby made aware that TPS is exempt from paying Ohio State Sales and Use Taxes and Federal Excise Taxes as set forth in state and federal laws. A letter of Tax Exemption will be provided upon request. Although TPS is tax exempt, some properties that TPS manages are not. Please see the table below for the tax status of each property.

PROPERTY	ADDRESS	TAX STATUS
Springdale Senior Limited Partnership (Baldwin Grove)	11111 Springfield Pike Cincinnati, OH 45246	Taxable
Reserve on South Martin, LP	7363 S. Martin Street Cincinnati, OH 45231	Taxable
Touchstone Property Services, Inc.	1088 W. Liberty Street Cincinnati, OH 45214	Non-Taxable
Cary Crossing, LLC	1411 Compton Road Cincinnati, OH 45231	Taxable
West Union Square, LLC	2942 Banning Road Cincinnati, OH 45239	Taxable
Sutter View, LLC	1754 Beecker Lane Cincinnati, OH 45225	Taxable
Park Eden Evanston, LLC (dba The Evanston)	1820 Rutland Avenue Cincinnati, OH 45207	Non-Taxable
Hamilton County Affordable Housing	1088 W. Liberty Street Cincinnati, OH 45214	Non-Taxable
City West Retail	1088 W. Liberty Street Cincinnati, OH 45214	Non-Taxable
Park Eden Apartments, LLC	2610 Park Avenue Cincinnati, OH 45206	Taxable
Pinecrest RAD, LLC	3951 W. 8 th Street Cincinnati, OH 45205	Taxable
PROPERTIES EXPECTED TO BE ADDED IN 2020		
Marianna Terrace	1700 Wabash Avenue Cincinnati, OH 45215	Taxable

20.5. Freight on Bill and Delivery: All costs submitted by the successful 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.

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

20.6. Work on TPS Property: If the successful proposer's work under the contract involves operations by the successful proposer on TPS premises, the successful proposer 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 TPS's negligence, shall indemnify TPS, and their officers, agents, servants and employees against all loss which may result in any way from any act or omission of the successful proposer, its agents, employees, or subcontractors.

20.7. Warranty: The services provided under the contract shall conform to all information

contained within the RFP documents as well as applicable Industry Published Technical Specifications, and if one of the above mentioned Specifications contains more stringent requirements than the other, the more stringent requirements shall apply.

20.8. Official, Agent and Employees of TPS Not Personally Liable: It is agreed by and between the parties hereto that in no event shall any official, officer, employee, or agent of TPS 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.

20.9. Salaries and Expenses Relating to the Successful Proposers Employees: Unless otherwise stated within the RFP documents, the successful proposer 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 successful proposer 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.

20.10. Independent Contractor: Unless otherwise stated within the RFP documents or the contract, the successful proposer 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.

20.11. 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 none of them shall be in limitation of any other remedy, right, obligation or agreement of either party.

20.12. Time of the Essence: Time is of the essence under this agreement as to each provision in which time of performance is a factor.

20.13. Limitation of Liability: In no event shall TPS be liable to the successful proposer for any indirect, incidental, consequential or exemplary damages.

20.14. Lobbying Certification: By proposing to do business with TPS or by doing business with TPS, each proposer certifies the following:

20.14.1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the proposer, 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 an Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal,

amendment or modification of any Federal contract, grant, loan or cooperative agreement.

20.14.2. 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 any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form –LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions.

20.14.3. The successful proposer shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontractors, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

20.14.4. This clause is a material representation of fact upon which reliance was placed when the award was made or entered into. The signing of a contract or acceptance of award certifies compliance with this certification, which is a prerequisite for making or entering into a contract, which is imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certifications shall be subject to civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

20.15. Privacy: Any Personal information collected, used, or acquired in connection with this Contract shall be protected against unauthorized use, disclosure, modification or loss. Contractor shall ensure that its directors, officers, employees, subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. Contractor agrees not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without express written consent of TPS or otherwise required by law. Contractor agrees to indemnify and hold harmless TPS for any damages related to Contractor’s unauthorized use of personal information.

20.16. 2 CFR Appendix II to Part 200 (F), Procurement: Pursuant to this CFR, as issued by the Office of the Secretary, HUD, TPS and the contractor each agree to comply with the following provisions and agree that any contract that ensues as a result of this RFP will include the following clauses, whether actually inserted or by reference:

20.16.1. Remedies for Contractor Breach: Pertaining to contract-related issues, it is the responsibility of both TPS and the contractor to communicate with each other in as clear and complete a manner as possible. If at any time

during the term of this contract TPS 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 TPS 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, TPS shall retain the right to, if conditions warrant, require the contractor to respond in a shorter period of time). Further, TPS shall, at a minimum, employ the following steps in dealing with the contractor as to any performance issues:

20.16.1.1. If the contractor is in material breach of the contract, TPS may promptly invoke the termination clause detailed within Section No. 3, form HUD-5370-C, General Conditions for Non-Construction Contracts, Section I— (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.

20.16.1.2. Prior to termination, TPS may choose to warn the contractor, verbally or in writing, of any issue of non-compliant or unsatisfactory performance. Such written warning may include placing the contractor on probation, thereby giving the contractor a certain period of time to correct the deficiencies or potentially suffer termination. TPS 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 TPS's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing TPS's alleged incorrect action(s).

20.16.1.3. After termination, if the contractor does not agree with TPS'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 TPS's position on the issue. The written protest must detail all

pertinent information pertaining to the dispute, including justification detailing TPS's alleged incorrect action(s).

- 20.16.1.4.** The response to any protest received shall be conducted in accordance with Section No. 4.0 of this document.
- 20.16.1.5.** It is TPS's policy to resolve all contractual issues informally and without litigation. Disputes will not be referred to HUD unless all administrative remedies have been exhausted. When appropriate, a mediator may be used to help resolve differences.
- 20.16.1.6.** For contracts of \$100,000 or less, the bidder/contractor may request to meet with the Procurement Officer.
- 20.16.1.7.** All claims by a contractor relating to performance of a contract shall be submitted in writing to the Procurement Officer or designee for a written decision. The contractor may request a conference on the claim. The Procurement Officer's decision shall inform the contractor of its appeal rights to the next higher level of authority in TPS. Contractor claims shall be governed by the Changes clause in the form HUD-5370-C.
- 20.16.2.** **Termination For Cause and Convenience:** As detailed within Clause No. 3 of, Form HUD-5370-C, General Conditions for Non- Construction Contracts, Section I—(Within or without Maintenance Work).
- 20.16.3.** **Executive Order 11246:** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 the equal opportunity clause provided under 41 CFR 60-1.4(b) is incorporated herein by reference, in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- 20.16.4.** **Copeland "Anti-Kickback" Act:** For all construction or repair contracts awarded, both parties hereby agree to comply with the Copeland "Anti- Kickback" Act (40 U.S.C. 3145) as supplemented in Department of Labor Regulations (29 CFR Part 3).
- 20.16.5.** **Davis-Bacon-Act:** For all construction contracts awarded in excess of

\$2,000 when required by Federal Grant Program legislation, both parties hereby agree to comply with the Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148) as supplemented in Department of Labor Regulations (29 CFR Part 5).

20.16.6. Sections 103 and 107 of the Contract Work Hours and Safety Standards Act: For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, both parties hereby agree to comply with the Contract Work Hours and Safety Act (40 U.S.C. 3702 and 3704) as supplemented in Department of Labor Regulations (29 CFR Part 5).

20.16.7. Rights to Inventions Made Under a Contract or Agreement. If the contract meets the definition of “funding agreement” under 37 CFR 401.2(a) and one of the parties wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or sub recipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

20.16.8. 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.

20.16.9. 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 I—(With or without Maintenance Work), TPS has unlimited rights to any data, including computer software, developed by the contractor in the performance of the contract specifically:

20.16.9.1. Except as provided elsewhere in this clause, TPS 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.

20.16.9.2. 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.

- 20.16.9.3.** For data first produced in the performance of this contract, the contractor may establish, without prior approval of the CO, claim to copyright subsisting in scientific or technical articles based on or containing data first produced in the performance of this contract. The contractor grants TPS and others acting on its behalf a paid-up, non-exclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform or display publicly by or on behalf of TPS.
- 20.16.9.4.** The contractor shall not, without the prior written permission of the contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains copyright notice, unless the contractor identifies such data and grants TPS a license of the same scope as identified in the preceding paragraph.
- 20.16.9.5.** TPS agrees not to remove any copyright notices placed on data and to include such notices in all reproductions of the data. If any data delivered under this contract are improperly marked, TPS may either return the data to the contractor, or cancel or ignore the markings.
- 20.16.9.6.** The contractor is responsible for obtaining from its subcontractors all data and rights necessary to fulfill the contractor's obligations under this contract.
- 20.16.9.7.** Notwithstanding any provisions to the contrary contained in the contractor's standard commercial license or lease contract pertaining to any restricted computer software delivered under this contract, and irrespective of whether any such contract has been proposed prior to the award of this contract or of the fact that such contract may be affixed to or accompany the restricted computer software upon delivery, the contractor agrees TPS shall have the rights set forth below to use, duplicate, or disclose any restricted computer software delivered under this contract. The terms and

conditions of this contract, including any commercial lease or licensing contract, shall be subject to the following procedures.

20.16.9.8. The restricted computer software delivered under this contract may not be used, reproduced, or disclosed by TPS except as provided below or as expressly stated otherwise in this contract. The restricted computer software may be: used or copied for use in or with the computer(s) for which it was acquired, including use at any TPS location to which such computer(s) may be transferred; used or copied for use in or with backup computer if any computer for which it was acquired is inoperative; reproduced for safekeeping (archives) or backup purposes; modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restrictions set forth in this contract; and used or copies for use in or transferred to a replacement computer.

20.16.10. **Clean Air Act:** For all contracts in excess of \$150,000, both parties hereby agree to comply with all applicable standards, orders or requirements issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q, and the Federal Water Pollution Control Act (33 USC 1251-1387), as amended.

20.16.11. **Byrd Anti-Lobbying Amendment** (31 USC 1352): Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

20.16.12. **Procurement of recovered materials:** Both parties must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only 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, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management

services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

20.17. Additional Federally Required Orders/Directives: Both parties agree that they will comply with the following laws and directives that TPS has received from HUD and that these same clauses will be a part of any contract that ensues as a result of this RFP:

20.17.1. Executive Order 11061, as amended, which directs the Secretary of HUD to take all action which is necessary and appropriate to prevent discrimination by agencies that utilize federal funds.

20.17.2. Public Law 88-352, Title VI of the Civil Rights Act of 1964, which provides that no person in the United States shall, on the basis of race, color, national origin or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives federal financial assistance. TPS hereby extends this requirement to the Contractor and its private contractors. Specific prohibited discriminatory actions and corrective action are described in Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 19901 et. seq.).

20.17.3. Public Law 90-284, Title VIII of the Civil Rights Act of 1968., popularly known as the Fair Housing Act, which provides for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person because of race, color, religion, sex or national origin. Pursuant to this statute, TPS 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.

20.17.4. The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age.

20.17.5. Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.).

20.17.6. HUD Information Bulletin 909-23 which is the following:

20.17.6.1. Notice of Assistance Regarding Patent and Copyright Infringement;

20.17.6.2. Clean Air and Water Certification; and

20.17.6.3. Energy Policy and Conversation Act.

20.17.7. The mentioned 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 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 party.

20.18. Nondiscrimination: During the performance of this Contract, Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies.

For construction contracts, the contractor agrees to both:

- (1) That, in the hiring of employees for the performance of work under the contract or any subcontract, no contractor or subcontractor, by reason of race, color, religion, sex, age, disability or military status as defined in section 4112.01 of the Ohio Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the contract relates;
- (2) That no contractor, subcontractor, or person acting on behalf of any contractor or subcontractor, in any manner, shall discriminate against, intimidate, or retaliate against any employee hired for the performance of work under the contract on account of race, color, religion, sex, age, disability or military status as defined in section 4112.01 of the Ohio Revised Code, national origin, or ancestry. All contractors shall have a written affirmative action program for the employment and effective utilization of economically disadvantaged persons, as referred to in division (E)(1) of section 122.71 of the Ohio Revised Code.

20.19. Headings: The headings, titles, and captions in this Attachment are inserted for convenience only and are in no way intended to describe, interpret, define, prioritize or limit the scope, extent, or intent of this Attachment or any provision herein.

21. Federal Requirement: The Work to be performed under this Agreement may be paid for in part by federal funds and therefore is subject to federal statutes, rules, regulations, laws, orders and directives applicable to work paid for by federal funds. In the event an applicable federal requirement conflicts with any provision of the Contract Documents, the federal requirement shall prevail and take precedence over and against such conflicting provisions. Federal requirements may include, but is not limited to:

- 21.1. Executive Order 11061, as amended which directs the Secretary of HUD to take all action necessary and appropriate to prevent discrimination by agencies that utilize federal funds;
 - 21.2. Title VI of the Civil Rights Act of 1964, which provides that no person 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.
 - 21.3. Title VIII of the Civil Rights Act of 1968;
 - 21.4. The Age Discrimination Act of 1975;
 - 21.5. Anti-Drug Abuse Act of 1988
 - 21.6. HUD Bulletin 909-23.
22. **Survivorship:** All provisions hereunder relating to payment, confidentiality, warranties, limitations on damages, publicity, and indemnity shall survive the termination of this Agreement.
23. **Governing Law:** This Agreement shall be governed and construed exclusively by its terms and by the laws of the State of Ohio, and the venue for any disputes will be exclusively with the court of appropriate jurisdiction in Hamilton County, Ohio.
24. **Force Majeure:** Neither party shall be liable for failure to perform if such failure is caused by conditions beyond its control including, but not limited to, Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.
25. **Severability:** If any provision of this Agreement is determined by a court having jurisdiction to be unenforceable to any extent, the rest of the provisions of this Agreement and the Contract Documents will remain enforceable to the fullest extent permitted by law.
26. **Ownership and Use of Documents:** All documents, materials, data, and records generated as a result of this Agreement shall remain the property of TPS. If this Agreement results in any material to be copyrighted, the author may copyright the work. However, TPS and the HUD will have the right to a royalty free, not exclusive and irrevocable license to reproduce, publish, use and authorize others to use the work for government purposes.
27. **Order of Precedence:** The term “Contract Documents” shall include the documents listed in this Provision. Each of the Contract Documents is an essential part of the agreement between the Parties, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to provide for the entire agreement. In the event of any conflict among the Contract Documents, the order of precedence shall be:
- 27.1. Applicable Federal and State of Ohio statutes and regulations
 - 27.2. Form HUD-5370-C General Conditions for Non-Construction Contracts
 - 27.3. This Agreement
 - 27.4. The Scope of Work, including all addenda and attachments
 - 27.5. The Contractor’s Fee Submission and/or Best and Final Offer
 - 27.6. Contractor’s Proposal subject to any limitations set forth in this Agreement

- 27.7. Contractor form of Agreement, if applicable
- 27.8. Other Documents incorporated by reference (if applicable)

28. Additional Terms and Conditions: Unless expressly provided for herein, no additional terms and conditions included with Contractor's Response shall be evaluated or considered and any and all such additional terms and conditions shall have no force and effect and are inapplicable to this Agreement. If submitted either purposefully through intent or design or inadvertently appearing separately in transmitting letters, specifications, literature, price lists (with the exception of the Fee Submission Proposal or Best and final Offer), or warranties, it is understood and agreed the general terms and conditions set forth herein are the only conditions applicable to this Agreement and the Proposer's authorized signature affixed to the proposal attests to this.

If Contractor, in the ordinary course of its business, requires any type of or form of agreement that provides for Contractor's general terms and conditions and such term(s) and condition(s) are contrary to or conflict with any term(s) or conditions(s) provided for herein, Parties unequivocally acknowledge and agree that the term(s) and condition(s) provided for herein shall take precedence and prevail including, but not limited to, instances when 1) the Contractor's form of agreement is signed subsequent to Contractor's Proposal submission and/or 2) the Contractor's form of agreement expressly states that its terms and provisions take precedence and/or supersedes all other Contract Documents. Such terms and conditions will effectively be void and unenforceable. Although, such terms and conditions may remain in Contractor's form of agreement, Parties acknowledge and agree that said terms and conditions have no effect, are void and are hereby expressly rejected.

29. Contract Award/Commencement: Upon submittal of its response to TPS's Solicitation, Contractor is accepting the terms of this Agreement. Upon issuance of award to Contractor, TPS is accepting Contractor's offer contained in the Fee Submission and/or Best and Final Offer. No **other contractual documents will be necessary or accepted** unless specifically expressed in the Contract Award and Acceptance. The Contract commences upon the date specified in TPS's execution and issuance of a Contract Award and Acceptance.