

ATTACHMENT C
CINCINNATI METROPOLITAN HOUSING AUTHORITY
GENERAL TERMS AND CONDITIONS

1. **Purpose:** This document sets out the general terms and conditions of the relationship between Contractor and CMHA and TPS. When CMHA is used in the rest of this Attachment, both CMHA and TPS are included unless noted otherwise.

2. **Contract Term:** This Agreement shall become effective upon CMHA issuing a notice of contract commencement to Contractor and shall remain in effect for a term of one year. However, CMHA 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:** CMHA shall retain the right to demand and receive a change in personnel assigned to the work if CMHA believes that such change is in the best interest of CMHA 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 CMHA, 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:** CMHA 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 CMHA 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 CMHA 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 CMHA in the matters described, and will take all reasonable steps to keep CMHA informed of progress and to respond to CMHA's inquiries. CMHA 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 CMHA has ownership rights. CMHA does not have rights in the existing software systems of the contractor.

5. **Mandatory Housing Authority Terms:** Parties acknowledge and agree that *theses General Terms and Conditions* contain mandatory terms as set-forth by CMHA and said terms shall not be modified or amended without the express written approval of CMHA'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. Any Provision(s) contained within these *General Terms and Conditions* that is similar to a Provision(s) or has the same or similar heading of any Provision(s) of *Form HUD-5370-C General Conditions for Non-Construction Contracts Section I (and Section II)* shall be considered supplemental provisions and are binding. Any Conflict in the language is unintentional and the HUD Provision(s) will be applicable.
6. **Subject to Appropriation of Funds:** CMHA'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 CMHA will have no further obligation to make payments and will be released from its obligations on the date funding expires.

- 6.1.** CMHA reserves the right to reduce or increase estimated or actual quantities in whatever amount necessary without prejudice or liability to CMHA, 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.** CMHA'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, CMHA 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.
- 7.4.** All Invoices must include the address of the property and unit number and the date property was serviced in the description of the service.
- 7.5.** Invoices shall not be backdated; the date on the invoice shall match the date the invoice is submitted to CMHA or the date the invoice is placed in the mail. Invoices which are not dated in accordance with this section will be rejected and the Contractor will need to submit a revised invoice to receive payment.
- 7.6.** 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.
- 7.7.** CMHA 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. CMHA will pay properly submitted invoices in approximately 30 days.
- 7.8.** Invoices shall be sent to Finance, 1635 Western Ave., Cincinnati, OH 45214 or accounts.payable@cintimha.com. If work is performed for Touchstone Properties, the invoice should be emailed to 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 G-1, Form HUD-5370-C, *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, in the event that CMHA disputes any portion of its billing(s), CMHA shall pay the undisputed portion of such billing and initiate the dispute-resolving procedures, as follows:

8.1.1. CMHA's representative shall, within 10 days after CMHA'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, CMHA 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 CMHA, CMHA shall pay CMHA's receipt of the decision. If the decision is in favor of CMHA, the contractor will either:

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

8.1.4.2. repay to CMHA 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 CMHA 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 CMHA 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 CMHA 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 CMHA's proper

use of any products or supplies under this Contract. This obligation of indemnification will not apply where CMHA has modified or misused the products or supplies and the claim of infringement is based upon the modification or misuse. CMHA 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 CMHA 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 CMHA 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 CMHA.

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 CMHA 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.

12.9. Provide evidence of deductibles. If awarded a contract, CMHA 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 CMHA.

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 CMHA be liable for any indirect, incidental, or consequential loss or damage of any kind, including but not necessarily limited to lost profits, even if CMHA 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 CMHA all advertising and publicity related matter relating to this Agreement wherein CMHA's name is mentioned or language used from which the connection of CMHA's name may, in CMHA's judgment, be inferred or implied. Contractor shall not publish or use such advertising and publicity matters without prior express written consent of CMHA.

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

The Contractor will not advertise that it is doing business with CMHA or use this Contract as a marketing or sales tool without the prior, written consent of CMHA.

The use by contractor of any photos taken of residential units is strictly prohibited.

16. **Communications with CMHA Staff Only:** Contractor agrees that it is providing services to CMHA and not to its residents. Therefore, all communications with residents or other individuals who may be present at the time and location that Contractor's services are being provided, whether solicited or unsolicited, shall be **strictly limited** to matters of scheduling and basic operating instructions where applicable. Contractor acknowledges that residents and their guests may be within hearing distance of Contractor's verbal communications with its own employees, CMHA Staff, or other contractors while Contractor is performing services under this contract. Contractor therefore, agrees to limit communications to the most essential and critical information needed to complete the services in a professional and workmanlike manner.

17. 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 CMHA to take any action or assert any right hereunder shall not be deemed a waiver of such right.

18. Remedies:

18.1. Actual Damages: Contractor is liable to CMHA 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, CMHA may substitute the services and/or material from a third party. CMHA may recover the costs associated with acquiring substitute services and/or materials, less any expense or costs saved by Contractor's default, from Contractor.

18.2. Deduction of Damages from Contract Price: Upon prior written notice being issued to the Contractor, CMHA 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.

19. Contractor Suspension: If Contractor fails to perform any one of its obligations under the Contract Documents it will be in default and CMHA, at its sole discretion, may suspend rather than terminate this Agreement when CMHA 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 CMHA resulting from Contractor's breach or other default.

20. Contractor Responsibilities:

20.1. 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 CMHA 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 CMHA 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.

- 20.1.1.** If CMHA requests additional drug screening, the test shall be performed within 24 hours and the summary shall be sent directly to CMHA from the testing facility.
- 20.2.** Contractor(s) shall provide uniforms and ID Badges identifying Contractor for all employees working on CMHA's properties. No employees will be allowed on CMHA'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 CMHA.
- 20.3.** 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 CMHA, Contractor shall immediately replace such personnel with an acceptable substitute to CMHA.
- 20.4.** 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.
- 20.5.** 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.
- 20.6.** 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 products and/or services at CMHA premises. At no time, will Contractor(s) discard debris into any CMHA refuse container.
- 20.7.** 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.
- 20.8.** The contractor shall be responsible for notifying CMHA 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.
- 20.9.** The Contractor shall be responsible for safeguarding all CMHA property provided for Contractor use. At the close of each workday, CMHA facilities, property and materials shall be inspected and secured.

20.10. Conservation of Utilities – The Contractor shall practice utility conservation in all CMHA 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.

21. Additional Considerations:

21.1. Right of Joinder; Additional Services/Purchases by Other Public Agencies (“Piggy-Back”): Contractor acknowledges that other Public Agencies 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 CMHA Contract, it is expressly understood that CMHA shall in no way be liable for the joining Public Agency obligations to the awarded Contractor in any manner whatsoever.

21.2. 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.

21.3. 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 CMHA 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.

21.4. Taxes: All persons doing business with CMHA are hereby made aware that CMHA 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.

21.5. 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.

21.5.1. 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 CMHA may, at its option, rescind the finalized contract under the default clause herein and seek compensatory damages as provided by law.

- 21.6. Work on CMHA Property:** If the successful proposer's work under the contract involves operations by the successful proposer on CMHA 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 CMHA's negligence, shall indemnify CMHA, 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.
- 21.7. 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.
- 21.8. Official, Agent and Employees of CMHA Not Personally Liable:** It is agreed by and between the parties hereto that in no event shall any official, officer, employee, or agent of CMHA 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.
- 21.9. 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.
- 21.10. 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.
- 21.11. Non-Solicitation:** The Contractor agrees that at all times following the date hereof, the Contractor shall not in any capacity, either separately or in association with others: (i) employ, engage or solicit for employment or engagement, or endeavor in any way to entice away from employment or engagement with CMHA or its affiliates, any employee or contractor of CMHA or its affiliates, nor (ii) solicit, induce or influence any supplier,

customer, agent, client, consultant or other person or entity that has a business relationship with CMHA to discontinue, reduce or modify such relationship with the Company.

21.12. No Disparagement or Misappropriation: At no time (i.e., indefinitely) following the Effective Date shall the Contractor (i) make any statements, or take any other actions whatsoever, to disparage, defame, sully or compromise the goodwill, name, brand or reputation of CMHA or any of its affiliates (collectively, the "Company Goodwill") or (ii) commit any other action that could likely injure, hinder or interfere with the business, business relationships or goodwill of CMHA or its affiliates. Contractor hereby represents and warrants that, prior to the Effective Date, Contractor has not committed any of the foregoing actions described in this Section.

21.13. Confidentiality: Contractor will be privy to sensitive information, documents, data, records, or other material that is confidential under this Agreement. Contractor may not disclose any information obtained by it as a result of this Agreement without the express written permission of CMHA. Contractor shall assume that all information, documents, data, records, or other material provided for under this Agreement is confidential.

The Contractor will be liable for the disclosure of any confidential information. The Parties agree that the disclosure of confidential information obtained under this Agreement may cause CMHA and/or its officers and/or employees irreparable damage for which remedies other than injunctive relief may be inadequate, and the Contractor agrees that in the event of such breach, CMHA shall be entitled to temporary and permanent injunctive relief to enforce this provision without the necessity of proving actual damages. This provision shall not, however, diminish or alter any right to assert claims and/or to recover damages.

When applicable, Contractor agrees to complete with the Privacy Act of 1974 and all rules and regulations issued under the Privacy Act of 1974.

21.14. 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.

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

- 21.16. Limitation of Liability:** In no event shall CMHA be liable to the successful proposer for any indirect, incidental, consequential or exemplary damages.
- 21.17. Lobbying Certification:** By proposing to do business with CMHA or by doing business with CMHA, each proposer certifies the following:
- 21.17.1.** 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.
- 21.17.2.** 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 an 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.
- 21.17.3.** 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.
- 21.17.4.** 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.
- 21.18. 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 CMHA

or otherwise required by law. Contractor agrees to indemnify and hold harmless CMHA for any damages related to Contractor's unauthorized use of personal information.

21.19. 2 CFR Appendix II to Part 200 (F), Procurement: Pursuant to this CFR, as issued by the Office of the Secretary, HUD, CMHA 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:

21.19.1. Remedies for Contractor Breach: Pertaining to contract-related issues, it is the responsibility of both CMHA 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 CMHA 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 CMHA 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, CMHA shall retain the right to, if conditions warrant, require the contractor to respond in a shorter period of time). Further, CMHA shall, at a minimum, employ the following steps in dealing with the contractor as to any performance issues:

21.19.1.1. If the contractor is in material breach of the contract, CMHA 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.

21.19.1.2. Prior to termination, CMHA 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. CMHA 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 CMHA's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing CMHA's alleged incorrect action(s).

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

21.19.1.4. The response to any protest received shall be conducted in accordance with Section No. 4.0 of this document.

21.19.1.5. It is CMHA'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.

21.19.1.6. For contracts of \$100,000 or less, the bidder/contractor may request to meet with the Procurement Officer.

21.19.1.7. 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 CMHA. Contractor claims shall be governed by the Changes clause in the form HUD-5370-C.

21.19.2. **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).

21.19.3. **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.”

- 21.19.4. 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).
- 21.19.5. 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).
- 21.19.6. 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).
- 21.19.7. 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.
- 21.19.8. 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.
- 21.19.9. 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), CMHA has unlimited rights to any data, including computer software, developed by the contractor in the performance of the contract specifically:
- 21.19.9.1.** Except as provided elsewhere in this clause, CMHA 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.

- 21.19.9.2.** 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.
- 21.19.9.3.** 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 CMHA 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 CMHA.
- 21.19.9.4.** 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 CMHA a license of the same scope as identified in the preceding paragraph.
- 21.19.9.5.** CMHA 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, CMHA may either return the data to the contractor, or cancel or ignore the markings.
- 21.19.9.6.** The contractor is responsible for obtaining from its subcontractors all data and rights necessary to fulfill the contractor's obligations under this contract.

21.19.9.7. 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 CMHA 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.

21.19.9.8. The restricted computer software delivered under this contract may not be used, reproduced, or disclosed by CMHA 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 CMHA 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.

21.19.10. **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.

21.19.11. **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.

21.19.12. 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.

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

21.20.1. 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.

21.20.2. 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. CMHA 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.).

21.20.3. 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, CMHA 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.

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

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

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

21.20.6.1. Notice of Assistance Regarding Patent and Copyright Infringement;

21.20.6.2. Clean Air and Water Certification; and

21.20.6.3. Energy Policy and Conversation Act.

21.20.7. 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.

21.21. 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.

21.22. 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.

- 22. 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:
- 22.1. 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;
 - 22.2. 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.
 - 22.3. Title VIII of the Civil Rights Act of 1968;
 - 22.4. The Age Discrimination Act of 1975;
 - 22.5. Anti-Drug Abuse Act of 1988
 - 22.6. HUD Bulletin 909-23.
- 23. Survivorship:** All provisions hereunder relating to payment, confidentiality, warranties, limitations on damages, publicity, and indemnity shall survive the termination of this Agreement.
- 24. 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.
- 25. 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.
- 26. 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.
- 27. Ownership and Use of Documents:** All documents, materials, data, and records generated as a result of this Agreement shall remain the property of CMHA. If this Agreement results in any material to be copyrighted, the author may copyright the work. However, CMHA 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.
- 28. 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:

- 28.1. Applicable Federal and State of Ohio statutes and regulations
- 28.2. Form HUD-51915 Model Form of Agreement Between Owner and Design Professional
- 28.3. This Agreement
- 28.4. The Scope of Work, including all addenda and attachments
- 28.5. The Contractor's Fee Submission and/or Best and Final Offer
- 28.6. Contractor's Proposal subject to any limitations set forth in this Agreement
- 28.7. Contractor form of Agreement, if applicable
- 28.8. Other Documents incorporated by reference (if applicable)

29. 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.

30. Contract Award/Commencement: Upon submittal of its response to CMHA's Solicitation, Contractor is accepting the terms of this Agreement. Upon issuance of award to Contractor, CMHA 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 CMHA's execution and issuance of a Contract Award and Acceptance.

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

OMB Approval No. 2577-0157 (exp. 11/30/2023)

**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. 3/31/2020)

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. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number. 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 2 CFR 200. These contractual agreements are required by Federal law or regulation pursuant to 2 CFR Part 200. 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, in a detailed manner, include 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 tele-phone 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 Professional 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. 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. Both the owner and design professional are responsible for ensuring that the design and construction comply with any applicable accessibility laws, including the Fair Housing Act (see 24 C.F.R. § 100.205), Sect. 504 of the Rehabilitation Act (Sect. 504), and the Americans with Disabilities Act (ADA). Compliance with Sect. 504 requires adherence to the Uniform Federal Accessibility Standards (See <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-aba-standards/ufas>) and compliance with the ADA requires adherence to the 2010 ADA standards (See https://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards_prt.pdf).

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.

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 "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 re-quired 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 2 CFR 200.

E. 1.2 Additional Services. The Owner shall perform a cost or price analysis as required by 2 CFR 200 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 2 CFR 200 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 905), the Design Professional shall provide such a certification to the Owner.

E. 1.5 Retention and Inspection of Records. Pursuant to 2 CFR 200, 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 2 CFR 200. 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 (2 CFR 200 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 (2 CFR 200, 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 (2 CFR 200), 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 \$150,000). Because of 2 CFR 200) 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 \$150,000.

E. 1.15 Energy Efficiency. Pursuant to Federal regulations (2 CFR 200) 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 Part 1, 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, disability, 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. Pursuant to 24 CFR § 1000.12, other civil rights statutes do apply to Indian Housing Authorities such as, Section 504, the Indian Civil Rights Act, and the Age Discrimination Act. (29 USC 794; 25 USC 1301.1303; and 42 USC 6101-6107 respectively).

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)