



ADDENDUM #1

Request for Proposals
Legal Services for Construction, Real Estate, and Development Activities
Solicitation No. 2023-4003

Originally Issued August 3, 2023

Addendum 1 – Issued August 24, 2023

To Offerors:

The following additions, deductions, changes and corrections to the proposal and specifications for the above referenced project shall hereby be incorporated into the work, and their affect on the proposal shall be reflected in the Offeror's proposal. Offerors shall also verify this fact by indicating the receipt of the addendum in their proposal.

CHANGES:

The Proposal Submittal Deadline is extended to August 31, 2023 at 11:00AM EST.

RFP Document is deleted and replaced with the attached document.

Attachment C is deleted and replaced with the attached document.

Attachment D is deleted and replaced with the attached document.

Attachment F is deleted and replaced with the attached document.

QUESTIONS:

- 1. Attachment D is referenced under 2. Economic Inclusion Participation (page 3) and 7.0 Performance Standards of Attachment A: Scope of Work. While it is a provided as a link on the procurement site, the link opens Exhibit C.1 instead. Could you please provide Attachment D?**

Please see revised Attachment D.

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Equal Opportunity Employer, Equal Housing Opportunities

REQUEST FOR PROPOSALS (RFP) NO. 2023-4003

CINCINNATI METROPOLITAN HOUSING AUTHORITY

SOLICITATION NUMBER 2023-4003

REQUEST FOR PROPOSALS

FOR

**Legal Services for Construction,
Real Estate, and Development Activities**

DATE ISSUED	August 3, 2023
NON-MANDATORY PRE-PROPOSAL CONFERENCE	Not applicable
SITE VISIT/WALK THROUGH	Not Applicable
LAST DATE FOR QUESTIONS	Questions shall be submitted in writing no later than 11:00 AM local time on August 21, 2023 , to procurement@cintimha.com . Responses to questions will be posted as an addendum to the website along with the other solicitation documents.
NOTICE OF INTENT TO SUBMIT	It is suggested that interested companies submit a Notice of Intent to submit a proposal to procurement@cintimha.com . By indicating your intent to submit a proposal you will receive notice of any addenda posted.
PROPOSAL SUBMITTAL RETURN & DEADLINE	August 3124, 2023, no later than 11:00 AM local time to Procurement@cintimha.com
WHAT TO SUBMIT	Submit: 1 electronic proposal; 1 electronic fee information form; and 1 electronic contract award and acceptance form. The 3 electronic files will be separate files. The 3 electronic files will be in .pdf format. Photographs and links to files will not be accepted.

CMHA Reserves the right to modify this schedule at its discretion. Notification of changes will be made available to all interested parties via an email and/or by posting on CMHA's website.

THE RESPONSIBILITY FOR SUBMITTING A RESPONSE TO THIS REQUEST AT THE DESIGNATED OFFICE OF CINCINNATI METROPOLITAN HOUSING AUTHORITY ON OR BEFORE THE STATED TIME AND DATE WILL BE SOLELY AND STRICTLY THE RESPONSIBILITY OF THE PROPOSER. THE AUTHORITY WILL IN NO WAY BE RESPONSIBLE FOR DELAYS CAUSED BY THE DELIVERY MANNER CHOSEN BY THE RESPONDENT OR CAUSED BY ANY OTHER OCCURRENCE.

REQUEST FOR PROPOSALS (RFP) NO. 2023-4003

INTRODUCTION

The Cincinnati Metropolitan Housing Authority (hereinafter, “CMHA” or “the Authority”) is a public entity that was formed in 1933 to provide federally subsidized housing and housing assistance to low-income families, within Hamilton County, Ohio. The Authority is headed by a Chief Executive Officer (CEO) and is governed by a seven-person board of commissioners and is subject to the requirements of Title 24 and Title 2 of the Code of Federal Regulations (hereinafter, “CFR”) and the Authority’s procurement policy. The Authority currently has approximately 205 employees, owns and/or manages over 5000 affordable housing units, and administers rental assistance for almost 12,000 privately owned rental units through the Section 8 HCV programs.

CMHA has several instrumentalities and related entities which develop and operate affordable housing in Hamilton County, Ohio. Those instrumentalities and related entities are included in this solicitation. As new developments and RAD conversions occur, additional instrumentalities will be created.

In keeping with its mandate to provide efficient and effective services, the Authority is now soliciting proposals from qualified law firms with experience in providing legal services for construction, development, and/or real estate activities. See Attachment A – Scope of Work for more detail. All proposals submitted in response to this solicitation must conform to all of the requirements and specifications outlined within this document and any designated attachments in its entirety.

Attachments: It is the responsibility of each proposer to verify that he/she has downloaded the following attachments pertaining to this RFP, which are hereby by reference included as a part of this RFP:

Attachment/Section	Description
A	Reference* Scope of Work
B	Separate Electronic File Fee Submission Form
C	Reference* General Terms and Conditions including the Form HUD-5370-C1, <i>General Conditions for Non-Construction Contracts Section I (Without Maintenance Work) and Additional Terms and Conditions for Legal Services</i>
D	Reference* Performance Standards for Legal Services
E	Separate Electronic File Contract Award and Acceptance Form. Include with the Fee Submission Form.
F	Reference* The Authority’s Instructions to Proposers (ITP)
G	Section 1 Form of Proposal
H	Section 1 HUD Form Packet
I	Section 4 Professional References
J	Separate Electronic File or via email Vendor Registration Form (if not previously submitted or if updating) If the proposer has not previously registered as a vendor with CMHA or if any information has changed, then the Vendor Registration Form (<i>Attachment J</i>) must be fully executed and submitted as part of the proposal submittal or prior to the submittal. If selected for award, these forms are required in order to process purchase orders for payment.

REQUEST FOR PROPOSALS (RFP) NO. 2023-4003

*Do not include the reference attachments in your proposal.

1.0 THE AUTHORITY’S MOTTO AND GOLD PERFORMANCE STANDARDS

In 2012, the Authority implemented its motto “Being an Asset to Hamilton County” in addition to establishing Gold Performance Standards which consist of the principles and values by which the Agency performs and how our partners, vendors, contractors and consultants are measured. The Gold Performance Standards are:

<i>Respect</i>	<i>Timely</i>	<i>Exceptional</i>	<i>Initiative</i>
<i>Excellent</i>	<i>Quality</i>	<i>Accurate</i>	<i>Integrity</i>
<i>Value</i>	<i>Creativity</i>	<i>Accountability</i>	<i>Professionalism</i>

It is the Authority’s intent to procure services from a contractor that shares these standards and can clearly demonstrate what they can bring to this project that no other planner can offer.

The contractor’s proposal and overall presentation will be a direct reflection of their understanding of the Authority’s Gold Performance Standards, i.e. quality, creativity and professionalism that the Authority may expect of the contractor as evaluated in the Gold Performance Standard Evaluation Factor.

2.0 ECONOMIC INCLUSION PARTICIPATION

The Authority has, within the terms of its procurement policy, established the following goals with regards to Economic Inclusion and encourages participation by MBE/WBE and Section 3 Business concerns.

- Minority-Owned Business Enterprise:
 - General Construction: 20%
 - Professional Services: 12%
 - Material/Supplies: 5%
- Women-Owned Business Enterprise goal 5%
- Section 3: meet or exceed applicable benchmarks set by HUD

In furtherance of Section 3 initiatives, any hiring or training opportunities that are generated through this contract agreement should be provided to Section 3 Business Concerns or Section 3 Workers to the greatest extent feasible.

~~Within Section 2 of the proposal, the proposer must complete and submit Attachment D, Section 3 forms and any applicable MBE/WBE/SBA certification.~~

3.0 PROPOSAL FORMAT

- 3.1 Proposal Submittal:** The Authority intends to retain the successful proposer pursuant to a “Best Value” basis, not a “Low Proposal” basis (“Best Value,” in that the Authority

CINCINNATI METROPOLITAN HOUSING AUTHORITY

Solicitation 2023-4003

REQUEST FOR PROPOSALS (RFP) NO. 2023-4003

will, as detailed within the following Section 4.0, consider factors other than just cost in making the award decision). Therefore, so that the Authority can properly evaluate the offers received, all proposals submitted in response to this RFP must be formatted in accordance with the sequence noted following. Each category must be separated by numbered dividers and labeled with the corresponding section reference also noted below. Separate electronic files may be utilized (and labeled) for each Section. None of the proposed services may conflict with any requirement the Authority has published herein or has issued by addendum

Section	Form	Description
1	Form of Proposal: <u>Attachment G</u>	This 1-page Form must be fully completed, executed where provided thereon and submitted under this section as a part of the proposal submittal.
2	HUD Form Packet: <u>Attachment H</u>	The following forms must be fully completed, executed where provided thereon and submitted under this section as a part of the proposal submittal: <ul style="list-style-type: none"> • Form HUD 5369-C <i>Certifications and Representations of Proposers, Non-Construction Contract</i> • Form HUD 2922 <i>Certification Regarding Debarment and Suspension</i> • Form HUD 50071 <i>Certification of Payments to Influence Federal Transactions</i> • Standard Form LLL <i>Disclosure Form to Report Lobbying (if required per HUD 50071)</i>
3	Proof of Insurance and Licensing	The proposer must provide current proof of insurance and licensing requirements. See Section 12 of the General Terms and Conditions (<i>Attachment C</i>). The proposer shall provide the following certificates evidencing the coverage amounts: <ul style="list-style-type: none"> • Workers Compensation & Employer’s Liability • General Liability • Automobile • Professional Liability and/or Errors and Omissions • Registration with the State of Ohio and/or City of Cincinnati • If licensing is required for the service, include applicable licenses <p>Include any applicable MBE/WBE/SBA certification</p>
4	Technical Proposal	Please begin this section with a statement or brief letter as to which of the types of work the proposer is seeking from CMHA: development legal services, construction legal services, and/or real estate legal services.

REQUEST FOR PROPOSALS (RFP) NO. 2023-4003

<p align="center">4a</p>	<p align="center">Approach and Understanding of the Task</p>	<p>Include a transmittal letter describing the consultant’s interest, understanding and commitment to the proposed contract. Also include a sample engagement plan which discusses how you will fulfill the requirements of the scope of work. Include:</p> <ul style="list-style-type: none"> • Proposed method for coordinating and communicating with CMHA and CMHA’s consultants. • Evidence of the consultant’s demonstrated understanding of the RFP Requirements including Public Housing Regulations and Procedures.
<p align="center">4b</p>	<p align="center">Experience and Qualifications</p>	<p>Proposal must clearly demonstrate full knowledge, understanding, and experience in methods, techniques and guidelines required for the performance of the required work. Capacity and capability of the consultant to perform the work on schedule and be responsive to the Authority’s direction should be clear. The proposer’s ability to form successful working relationships and to effectively communicate is of the essence.</p> <ul style="list-style-type: none"> • The name of the firm, the location of the firm’s principal place of business, and if different from the principal place of business the location where the proposed services will be performed. • The age of the Offeror’s business and the average number of employees over the last year. • Demonstrated track record of providing services listed in the Scope of Work. • Experience with the HUD Public and Indian Housing Funding Sources (such as Capital, Replacement Housing Factor Funds, Demolition and Disposition Transition Funds, Operating Subsidy, and Housing Choice Vouchers). • The abilities, qualifications, certifications, and experience of all “key” personnel who would be assigned to provide work, including resumes for each. • Demonstrated track record of other contracts under which services were similar in scope, size, and/or discipline including references. • Experience with LIHTC. Include a list of all LIHTC projects or applications for which the firm provided legal advice in the past two years and a brief description of subject transactions. Identify which have been funded, if any of the transactions have closed. Describe your experience and expertise in drafting, reviewing and negotiating LIHTC related legal documents. • Experience with the legal requirements related to conventional financing, the use of Low-Income Housing Tax Credits (“LIHTC”), and other public and private funding mechanisms.

REQUEST FOR PROPOSALS (RFP) NO. 2023-4003

		<ul style="list-style-type: none"> • Experience negotiating agreements between public housing authorities and their development partners • Experience with the interaction of housing authorities with the U.S. Department of Housing and Urban Development (“HUD”) and with HUD’s regulations and requirements relating to the rental assistance demonstration program and mixed-finance development programs. • Experience and expertise in providing legal services in the areas of Ohio real estate transactions and partnership formations. • Range of staff size and workload over the last year. • A listing of and similar detail on any proposed subcontractor or consultant. If proposing as a joint venture, please itemize the projects previously completed together. • Other relevant information at the consultant’s option. This may include management techniques, cost control methods and experience, cost estimating track record and schedule compliance. • Qualifications: The personnel assigned to perform the services under this contract shall be certified and licensed to perform the services. Attorneys must be a member in good standing of the State Bar. Proof shall be submitted under Tab 3.
<p align="center">4c</p>	<p align="center">Previous Client Satisfaction</p>	<p>A list of references should highlight at least three (3) recent projects of a similar nature, magnitude and complexity; projects must include telephone number and affiliation, as well as a brief explanation of referenced work. The consultant shall indicate the individuals on staff who had responsibility for each project and whether or not these people are still employed by the consultant. <u>Ideally, contractor will submit a copy of a former plan or report for a similar scope.</u></p> <p><u>Quality Plan:</u> Describe your plan or procedure to monitor employees to assure quality if awarded a contract</p>
	<p align="center">Professional References <u>Attachment I</u></p>	<p>The proposer shall submit a listing of 5 former or current professional references for which the proposer has performed similar or like services to those being proposed herein within the past year. You <i>must</i> reference any previous work performance for the Authority, however, CMHA should not be listed as more than one of your references. It is reasonable to assume the Authority will contact references. The listing shall, at a minimum, include:</p>

REQUEST FOR PROPOSALS (RFP) NO. 2023-4003

		<ul style="list-style-type: none"> • The client’s name, • The client’s contact name, • The client’s address, • The client’s telephone number and email address, • The Client’s Business Name (if applicable), and <p>A brief description and scope of the service(s) and the dates the services were provided.</p> <p>Do not use family members as references.</p>
5	Equal Employment Opportunity	The proposer must submit under this Section a copy of its Equal Opportunity Employment Policy.
6	Subcontractor/Joint Venture Information (If Applicable):	<p>The proposer shall identify hereunder whether or not he/she intends to use any subcontractors for this job, if awarded, and/or if the proposal is a joint venture with another firm. Please remember that all information required from the proposer under the proceeding Sections must also be included for any major subcontractors (10% or more) or from any joint venture. At a minimum, the following forms must be submitted for the subcontractor:</p> <ul style="list-style-type: none"> • Contractor’s business name, contact name, address, email address, phone number • HUD Packet of forms • Section 3 forms • Licensing and Insurance <p>Label forms clearly to indicate whether they are for the contractor or subcontractor.</p>
7	Other Information (Optional)	The proposer may include hereunder any other general information that the proposer believes is appropriate to assist CMHA in its evaluation.

3.1.1 If no information is to be placed under any of the above noted Sections (especially the “Optional”), please place thereunder a statement such as “THIS SECTION LEFT INTENTIONALLY BLANK.” DO NOT eliminate any of the sections.

3.2 Proposal Submission: All proposals must be emailed and time-stamped **received** in the designated the Authority office by no later than the submittal deadline stated herein (or within any ensuing addendum). A total of 1 original signed proposal which may consist of one or several files, along with the fee information in a separate file, and the executed Contract Award and Acceptance in a separate file addressed to

Cincinnati Metropolitan Housing Authority
procurement@cintimha.com

CINCINNATI METROPOLITAN HOUSING AUTHORITY

Solicitation 2023-4003

REQUEST FOR PROPOSALS (RFP) NO. 2023-4003

The electronic copy should include at least three files: one (or more) for the proposal, one for the fee information, and one for the Contract Award and Acceptance. However, the proposal may be in more than one electronic file. The subject line of the cover email(s) must clearly denote the RFP number and the body of the email must have the proposer’s name. Proposals received after the published deadline will not be accepted.

4.0 PROPOSAL EVALUATION:

Each Proposal submittal will be evaluated based upon the following information and criteria.

4.1 Evaluation Criteria: The evaluation panel will use both objective and subjective criteria to evaluate each proposal submittal received; award of points for each listed factor will be based upon the documentation that the proposer submits within his/her proposal submittal.

NO	POINTS	WEIGHTED AVERAGE	DESCRIPTION
1	0-5	25%	The Proposed Fees to provide the services required
2	0-5	25%	Approach and Understanding of the Services
3	0-5	30%	Experience and Qualifications
4	0-5	10%	Previous Client Satisfaction
5	0-5	5%	<p>Gold Performance Standards The Proposer’s clear demonstration and understanding of THE AUTHORITY’S MOTTO and GOLD PERFORMANCE STANDARDS through the firm’s proposal as a direct reflection of the type of product the Authority may expect from the proposer.</p> <ul style="list-style-type: none"> • Legible and readable • No spelling or grammar errors • All required information is provided • Information is in correct sequence • Overall Presentation
		95%	Sub-Total Points (Other than Interview and Preference Points)

REQUEST FOR PROPOSALS (RFP) NO. 2023-4003

4.1.1 Interview: Those Contractors with highest scores in categories one through five may be asked to participate in the second stage, consisting of the sixth factor: Any and all interviews are at the sole discretion of the Authority.

6	0-5	5%	Appear and Participate in an <u>Interview with the Authority</u> to discuss qualifications and proposal. Scores assigned for proposals, under any category, may be amended based on information obtained during the oral interviews.
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	100	Total Possible Points
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2. Could you please clarify the difference between the 3 references we are requested to submit under 4c Previous Client Satisfaction and the 5 requested references under 4c Professional References Attachment I (both under 3.0 Proposal Format, page 6) as well as the references requested under 4b. Experience and Qualifications, “Demonstrated track record” bullet? **Reference information should be provided in the form Attachment I as requested. Firms should also provide additional information about their references as requested in sections 4b and 4c.**

3. While the procurement calendar (page 1) and 3.2 Proposal Submission (page 7) states that the proposal should be submitted electronically, 2.3. Proposal Preparation, Submission and Receipt by the Authority (page 7 of the Instructions to Proposers) requests hardcopies in binders. Should we disregard this section?

Please see revised Attachment F.

4. Exception Requested: Regarding section 12. Insurance, a waiver of subrogation is not available on the Firm's Professional Liability Insurance policy. A waiver of subrogation is only available under the Firm's General Liability, Automobile, and Workers' Compensation policies. The Firm's General Liability policy affirms it will respond to a covered loss caused by the Firm's negligence, but does not have blanket contractual liability. The Firm's Professional Liability insurance is on a claims-made basis, not per occurrence. Further, as Professional Liability insurance is first-party coverage, we are unable to list CMHA as an additional insured. Additional insured status is only available under General Liability and Automobile liability policies. Primary status is only available on General Liability and Automobile policies as well. The Firm's insurers can provide 30 days' advance notice for policy cancellation, and the Firm agrees to provide 30 days' advance notice of material change or non-renewal. Regarding deductibles, the Firm's annual revenue is over \$400 million, and retention limits on our policies are in line with those of other firms of our size and scope of practice.

Granted. Please see revised Attachment C.

5. **Exception Requested: Regarding section 19.1, while the Firm does conduct background searches on all partners and employees, we do not conduct drug screening. We are also not permitted to disclose copies of background searches for confidentiality purposes, but would be happy to provide CMHA with any other reasonable information to evidence the Firm's compliance with this section.**

Granted. Please see revised Attachment C.

6. **Exception Requested: Regarding sections 20.16.9 and 26, any reference to the ownership of files and materials shall not include the Firm's own files such as attorney drafts and work product.**

Granted. Please see revised Attachment C.

7. **Exception Requested: With regards to any reference to disputes or release, CMHA and the Firm agree to provide prompt written notice of any disputes or disagreements and to mutually work to resolve such disputes. Nothing contained herein shall limit the Firm's legal rights and obligations with such disputes, nor prejudice the rights of the Firm's Professional Liability insurer to subrogate under our policy.**

Disputes are governed by HUD 5370-C Section 7 (see Attachment C). No changes can be made to this form.

END OF ADDENDUM TO DATE 8/24/2023

EXHIBIT 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 Exhibit, 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.

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.

- 12.2.2.** The coverage shall be not less than \$1,000,000 each occurrence and \$1,000,000 general aggregate.
- 12.2.3.** The Authority and its affiliates must be ~~named as an Additional Insured and be a~~ Certificate Holder.
- 12.3. Automobile Liability Insurance** with CMHA named as an additional insured and as the Certificate Holder with minimum limits as follows: \$1,000,000 combined single limit; \$50,000/\$100,000 for vehicles utilized during the contract if such vehicles are not owned by the Contractor or any agent, owner, or employee of the Contractor (i.e., rental vehicles); \$5,000 medical pay.
- 12.3.1.** This is required of any contractor who will be doing hands on work at the Authority properties.
- 12.4. Workers' Compensation Insurance** as required by state statute and **Employer's Liability Insurance** covering all of Contractor's employees acting within the course and scope of this Contract.
- 12.4.1.** Worker's Compensation is required for any contractor made up of more than one person.
- 12.4.2.** Employer's Liability Insurance must cover all of Contractor's employees acting within the course and scope of this Contract. Employer's Liability limit is \$500,000 bodily injury for each accident, \$500,000 bodily injury by disease for each employee, and \$500,000 bodily injury disease aggregate. The Authority and its affiliates must be a Certificate Holder.
- 12.5. Excess Liability Insurance (Umbrella Policy):** may compensate for a deficiency in general liability or automobile insurance coverage limits.
- 12.6.** The coverages provided to CMHA shall be primary and not contributing to or in excess of any existing CMHA insurance coverages.
- 12.7.** The Insurance shall contain provisions preventing cancellation or non-renewal without at least 45 days' notice to CMHA and stating that the carrier will waive all rights of recovery, under subrogation or otherwise, against CMHA, its office, agents, employees or Board of Commissioners. **Waiver of Subrogation does not apply to Professional Liability coverage.**
- 12.8.** Contractor shall provide certificates evidencing the coverage required under this Provision of this Agreement to CMHA upon execution of this Agreement and annually thereafter evidencing renewals thereof. At any time during the term of this Agreement, CMHA may request, in writing, and the Contractor shall thereupon within 10 days supply to CMHA evidence satisfactory of compliance with the provision of this section.
- 12.8.1.** The Contract may be terminated if the insurance lapses.

- 12.9. Provide evidence of deductibles. If awarded a contract, 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.
16. **Non-Waiver of Rights:** If either party does not seek compensation for breach or insist upon strict performance of any provision of this Agreement, that Party is not prevented from seeking compensation or insisting upon strict performance for a future breach of the same or similar provision. Failure of CMHA to take any action or assert any right hereunder shall not be deemed a waiver of such right.
17. **Remedies:**
- 17.1. **Actual Damages:** Contractor is liable to 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.
- 17.2. **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.
18. **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.

19. Contractor Responsibilities:

- 19.1.** Contractor shall perform national criminal history checks for Ohio, Indiana, and Kentucky, ~~and 10-panel drug screening tests~~ on all prospective employees performing work under this RFP or coming onto a 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.
- ~~**19.1.1.** 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.~~
- 19.2.** 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.
- 19.3.** Contractor's personnel shall be neat and conduct all work in a professional and efficient manner. If any employee of Contractor is deemed unacceptable by CMHA, Contractor shall immediately replace such personnel with an acceptable substitute to CMHA.
- 19.4.** Contractor(s) shall practice acceptable safety precautions so as not to cause harm to any persons or property while performing services under this RFP or any resulting contract. Contractor(s) shall follow industry safety standards, and use only industry approved safety equipment in accordance with the manufacturer's specifications in the performance of all duties.
- 19.5.** Contractor(s) shall pay all of its employees, including any and all approved Sub-Contractors, at least the legal minimum wages as determined by the United States Department of Labor and the United States Department of Housing and Urban Development and Department of Labor Prevailing Wage. Wage Determinations can be accessed via the Department of Labor website, www.wdol.gov.

- 19.6. Upon completion of the work, Contractor(s) shall clean up the area where the work was performed and Contractor(s) shall remove any debris generated by the products and/or services at CMHA premises. At no time, will Contractor(s) discard debris into any CMHA refuse container.
- 19.7. Contractor(s) shall clearly mark all work areas that might reasonably be expected to endanger the health and safety of residents, guests, or any other persons. Contractor(s) will provide such signs, markers and barricades as required to identify all work areas and minimize inherent dangers.
- 19.8. The contractor shall be responsible for notifying 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.
- 19.9. 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.
- 19.10. 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.

20. Additional Considerations:

- 20.1. **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.
- 20.2. **Non-Escalation:** Unless otherwise specified within the RFP documents, the unit prices reflected on the contract shall remain firm with no provision for price increases during the term of the contract.
- 20.3. **Required Permits:** Unless otherwise stated in the RFP documents, all local, State or

Federal permits which may be required to provide the services ensuing from award of this RFP, whether or not they are known to either 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.

20.4. 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.

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

PROPERTY	ADDRESS	TAX STATUS
Springdale Senior Limited Partnership (Baldwin Grove)	11111 Springfield Pike Cincinnati, OH 45246	Taxable
Reserve on South Martin, LP	7363 S. Martin Street Cincinnati, OH 45231	Taxable
Touchstone Property Services, Inc.	1088 W. Liberty Street Cincinnati, OH 45214	Non-Taxable
Cary Crossing, LLC	1411 Compton Road Cincinnati, OH 45231	Taxable
West Union Square, LLC	2942 Banning Road Cincinnati, OH 45239	Taxable
Sutter View, LLC	1754 Beecker Lane Cincinnati, OH 45225	Taxable
Park Eden Evanston, LLC (dba The Evanston)	1820 Rutland Avenue Cincinnati, OH 45207	Non-Taxable
Hamilton County Affordable Housing	1088 W. Liberty Street Cincinnati, OH 45214	Non-Taxable
City West Retail	1088 W. Liberty Street Cincinnati, OH 45214	Non-Taxable
Park Eden Apartments, LLC	2610 Park Avenue Cincinnati, OH 45206	Taxable
Pinecrest RAD, LLC	3951 W. 8 th Street Cincinnati, OH 45205	Taxable
Marianna Terrace, LLC	1700 Wabash Avenue Cincinnati, OH 45215	Taxable
Horizon Hills, LLC	1003 Grand Avenue Cincinnati, OH 45204	Non-Taxable

- 20.5. Freight on Bill and Delivery:** All costs submitted by the successful proposer shall reflect the cost of delivering the proposed items and/or services to the locations(s) specified within the RFP documents or within the contract.
- 20.5.1.** The successful proposer agrees to deliver to the designated location(s) on or before the date as specified in the finalized contract. Failure to deliver on or before the specified date constitutes an event of default by the successful proposer. Upon default, the successful proposer agrees that CMHA may, at its option, rescind the finalized contract under the default clause herein and seek compensatory damages as provided by law.
- 20.6. Work on 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.
- 20.7. Warranty:** The services provided under the contract shall conform to all information contained within the RFP documents as well as applicable Industry Published Technical Specifications, and if one of the above mentioned Specifications contains more stringent requirements than the other, the more stringent requirements shall apply.
- 20.8. Official, Agent and Employees of 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.
- 20.9. Salaries and Expenses Relating to the Successful Proposers Employees:** Unless otherwise stated within the RFP documents, the successful proposer shall pay all salaries and expenses of, and all Federal, Social Security taxes, Federal and State Unemployment taxes, and any similar taxes relating to its employees used in the performance of the contract. The successful proposer further agrees to comply with all Federal, State and local wage and hour laws and all licensing laws applicable to its employees or other personnel furnished under this agreement.
- 20.10. Independent Contractor:** Unless otherwise stated within the RFP documents or the contract, the successful proposer is an independent contractor. Nothing herein shall create any association, agency, partnership or joint venture between the parties hereto and neither shall have any authority to bind the other in any way.

- 20.11. Waiver of Breach:** A waiver of either party of any terms or condition of this agreement in any instance shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, obligation or agreement of either party.
- 20.12. Time of the Essence:** Time is of the essence under this agreement as to each provision in which time of performance is a factor.
- 20.13. Limitation of Liability:** In no event shall CMHA be liable to the successful proposer for any indirect, incidental, consequential or exemplary damages.
- 20.14. Lobbying Certification:** By proposing to do business with CMHA or by doing business with CMHA, each proposer certifies the following:
- 20.14.1.** No Federal appropriated funds have been paid or will be paid, by or on behalf of the proposer, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
- 20.14.2.** If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form –LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions.
- 20.14.3.** The successful proposer shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontractors, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
- 20.14.4.** This clause is a material representation of fact upon which reliance was placed when the award was made or entered into. The signing of a contract or acceptance of award certifies compliance with this certification, which is a prerequisite for making or entering into a contract, which is imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the

required certifications shall be subject to civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

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

20.16. 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:

20.16.1. 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:

20.16.1.1. 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.

20.16.1.2. 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).

- 20.16.1.3.** 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).
- 20.16.1.4.** The response to any protest received shall be conducted in accordance with Section No. 4.0 of this document.
- 20.16.1.5.** It is 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.
- 20.16.1.6.** For contracts of \$100,000 or less, the bidder/contractor may request to meet with the Procurement Officer.
- 20.16.1.7.** All claims by a contractor relating to performance of a contract shall be submitted in writing to the Procurement Officer or designee for a written decision. The contractor may request a conference on the claim. The Procurement Officer's decision shall inform the contractor of its appeal rights to the next higher level of authority in CMHA. Contractor claims shall be governed by the Changes clause in the form HUD-5370-C.

- 20.16.2. Termination For Cause and Convenience:** As detailed within Clause No. 3 of, Form HUD-5370-C, General Conditions for Non- Construction Contracts, Section I—(Within or without Maintenance Work).
- 20.16.3. Executive Order 11246:** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 the equal opportunity clause provided under 41 CFR 60-1.4(b) is incorporated herein by reference, in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”.
- 20.16.4. Copeland “Anti-Kickback” Act:** For all construction or repair contracts awarded, both parties hereby agree to comply with the Copeland “Anti- Kickback” Act (40 U.S.C. 3145) as supplemented in Department of Labor Regulations (29 CFR Part 3).
- 20.16.5. Davis-Bacon-Act:** For all construction contracts awarded in excess of \$2,000 when required by Federal Grant Program legislation, both parties hereby agree to comply with the Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148) as supplemented in Department of Labor Regulations (29 CFR Part 5).
- 20.16.6. Sections 103 and 107 of the Contract Work Hours and Safety Standards Act:** For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, both parties hereby agree to comply with the Contract Work Hours and Safety Act (40 U.S.C. 3702 and 3704) as supplemented in Department of Labor Regulations (29 CFR Part 5).
- 20.16.7. Rights to Inventions Made Under a Contract or Agreement.** If the contract meets the definition of “funding agreement” under 37 CFR 401.2(a) and one of the parties wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or sub recipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- 20.16.8. Patent Rights:** Both parties hereby agree to comply with HUD Bulletin 90- 23, which is the (a) Notice of Assistance Regarding Patent and Copyright Infringement.

20.16.9. Copy Rights/Rights in Data: In addition to the requirements contained within Clause No. 5 of Attachment G-1, General Conditions for Non- Construction Contracts, Section I—(With or without Maintenance Work), CMHA has unlimited rights to any data, including computer software, developed by the contractor in the performance of the contract, excluding files maintained by firm for purpose of legal representation. Specifically:

20.16.9.1. 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.

20.16.9.2. The contractor shall have the right to: use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the contractor in the performance of this contract, unless provided otherwise in this clause; protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in this clause; substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action in accordance with this clause; and establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided below.

20.16.9.3. For data first produced in the performance of this contract, the contractor may establish, without prior approval of the CO, claim to copyright subsisting in scientific or technical articles based on or containing data first produced in the performance of this contract. The contractor grants 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.

20.16.9.4. The contractor shall not, without the prior written permission of the contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains copyright notice, unless the

contractor identifies such data and grants CMHA a license of the same scope as identified in the preceding paragraph.

20.16.9.5. 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.

20.16.9.6. The contractor is responsible for obtaining from its subcontractors all data and rights necessary to fulfill the contractor's obligations under this contract.

20.16.9.7. Notwithstanding any provisions to the contrary contained in the contractor's standard commercial license or lease contract pertaining to any restricted computer software delivered under this contract, and irrespective of whether any such contract has been proposed prior to the award of this contract or of the fact that such contract may be affixed to or accompany the restricted computer software upon delivery, the contractor agrees 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.

20.16.9.8. 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.

20.16.10. **Clean Air Act:** For all contracts in excess of \$150,000, both parties hereby agree to comply with all applicable standards, orders or requirements issued pursuant to

the Clean Air Act (42 U.S.C. 7401-7671q, and the Federal Water Pollution Control Act (33 USC 1251-1387), as amended.

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

20.16.12. Procurement of recovered materials: Both parties must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

20.17. Additional Federally Required Orders/Directives: Both parties agree that they will comply with the following laws and directives that 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:

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

20.17.2. Public Law 88-352, Title VI of the Civil Rights Act of 1964, which provides that no person in the United States shall, on the basis of race, color, national origin or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives federal financial assistance. 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.).

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

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

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

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

20.17.6.1. Notice of Assistance Regarding Patent and Copyright Infringement;

20.17.6.2. Clean Air and Water Certification; and

20.17.6.3. Energy Policy and Conversation Act.

20.17.7. The mentioned herein of any statute or Executive Order is not intended as an indication that such statute or Executive Order is necessarily applicable not is the failure to mention any statute or Executive Order intended as an indication that such statute or Executive Order is not applicable. In this connection, therefore each provision of law and each clause, which is required by law to be inserted in this agreement, shall be deemed to have been inserted herein, and this agreement shall be read and enforced as though such provision or clause had been physically inserted herein. If, through mistake or otherwise, any such provision is not inserted or is inserted incorrectly, this agreement shall forthwith be physically amended to make such insertion or correction upon the application of either party.

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

For construction contracts, the contractor agrees to both:

(1) That, in the hiring of employees for the performance of work under the contract or any subcontract, no contractor or subcontractor, by reason of race, color, religion, sex, age, disability or military status as defined in section 4112.01 of the Ohio Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the

employment of a person qualified and available to perform the work to which the contract relates;

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

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

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

- 21.1. Executive Order 11061, as amended which directs the Secretary of HUD to take all action necessary and appropriate to prevent discrimination by agencies that utilize federal funds;
- 21.2. Title VI of the Civil Rights Act of 1964, which provides that no person shall, on the basis of race, color, national origin or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives federal financial assistance.
- 21.3. Title VIII of the Civil Rights Act of 1968;
- 21.4. The Age Discrimination Act of 1975;
- 21.5. Anti-Drug Abuse Act of 1988
- 21.6. HUD Bulletin 909-23.

22. Survivorship: All provisions hereunder relating to payment, confidentiality, warranties, limitations on damages, publicity, and indemnity shall survive the termination of this Agreement.

23. Governing Law: This Agreement shall be governed and construed exclusively by its terms and by the laws of the State of Ohio, and the venue for any disputes will be exclusively with the court of appropriate jurisdiction in Hamilton County, Ohio.

24. Force Majeure: Neither party shall be liable for failure to perform if such failure is caused by conditions beyond its control including, but not limited to, Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

- 25. Severability:** If any provision of this Agreement is determined by a court having jurisdiction to be unenforceable to any extent, the rest of the provisions of this Agreement and the Contract Documents will remain enforceable to the fullest extent permitted by law.
- 26. Ownership and Use of Documents:** All documents, materials, data, and records generated as a result of this Agreement shall remain the property of 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.
- 27. Order of Precedence:** The term “Contract Documents” shall include the documents listed in this Provision. Each of the Contract Documents is an essential part of the agreement between the Parties, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to provide for the entire agreement. In the event of any conflict among the Contract Documents, the order of precedence shall be:
- 27.1.** Applicable Federal and State of Ohio statutes and regulations
 - 27.2.** Form HUD-5370-C General Conditions for Non-Construction Contracts
 - 27.3.** This Agreement
 - 27.4.** The Scope of Work, including all addenda and attachments
 - 27.5.** The Contractor’s Fee Submission and/or Best and Final Offer
 - 27.6.** Contractor’s Proposal subject to any limitations set forth in this Agreement
 - 27.7.** Contractor form of Agreement, if applicable
 - 27.8.** Other Documents incorporated by reference (if applicable)
- 28. Additional Terms and Conditions:** Unless expressly provided for herein, no additional terms and conditions included with Contractor’s Response shall be evaluated or considered and any and all such additional terms and conditions shall have no force and effect and are inapplicable to this Agreement. If submitted either purposefully through intent or design or inadvertently appearing separately in transmitting letters, specifications, literature, price lists (with the exception of the Fee Submission Proposal or Best and final Offer), or warranties, it is understood and agreed the general terms and conditions set forth herein are the only conditions applicable to this Agreement and the Proposer’s authorized signature affixed to the proposal attests to this.

If Contractor, in the ordinary course of its business, requires any type of or form of agreement that provides for Contractor’s general terms and conditions and such term(s) and condition(s) are contrary to or conflict with any term(s) or conditions(s) provided for herein, Parties unequivocally acknowledge and agree that the term(s) and condition(s) provided for herein shall take precedence and prevail including, but not limited to, instances when 1) the Contractor’s form of agreement is signed subsequent to Contractor’s Proposal submission and/or 2) the Contractor’s form of agreement expressly states that its terms and provisions take precedence and/or supersedes all other Contract Documents. Such terms and conditions will effectively be void and unenforceable. Although, such terms and

conditions may remain in Contractor's form of agreement, Parties acknowledge and agree that said terms and conditions have no effect, are void and are hereby expressly rejected.

29. Contract Award/Commencement: Upon submittal of its response to 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.

General Conditions for Non-Construction Contracts
Section I – (With or without Maintenance Work)

General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 3/31/2020)

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

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

- 1) **Non-construction contracts** (*without* maintenance) **greater than \$105,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 968.105) **greater than \$2,000 but not more than \$150,000 - use Section II;** and
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$150,000 – use Sections I and II.**

Section I - Clauses for All Non-Construction Contracts greater than \$150,000

1. Definitions

The following definitions are applicable to this contract:

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

2. Changes

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

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

3. Termination for Convenience and Default

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

4. Examination and Retention of Contractor's Records

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

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

5. Rights in Data (Ownership and Proprietary Interest)

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

6. Energy Efficiency

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

7. Disputes

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

8. Contract Termination; Debarment

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

9. Assignment of Contract

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

10. Certificate and Release

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

11. Organizational Conflicts of Interest

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

12. Inspection and Acceptance

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

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

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

13. Interest of Members of Congress

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

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

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

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

- (i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

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

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

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

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

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

(iii) Selling activities by independent sales representatives.

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

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

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

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

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

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

16. Equal Employment Opportunity

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

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

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

17. Dissemination or Disclosure of Information

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

18. Contractor's Status

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

19. Other Contractors

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

20. Liens

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

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

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

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

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

22. Procurement of Recovered Materials

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

Attachment D

CINCINNATI METROPOLITAN HOUSING AUTHORITY *PERFORMANCE STANDARDS FOR LEGAL SERVICES*

1. **Purpose:** This document sets out additional terms and conditions for Contractors providing legal services to CMHA.
2. **Conflicts of Interest:** Contractor shall be vigilant in identifying conflicts or potential conflicts of interests and the appearance of such conflicts. Contractor must discuss any existing or potential conflict with CMHA at the onset of the representation or as soon as the conflict becomes apparent. All existing and potential conflicts must be resolved to the satisfaction of CMHA before the representation may begin or continue.
3. **Confidentiality:** Contractor shall ensure that the attorney-client privilege, the work product doctrine, and other applicable privileges are fully retained for the benefit of CMHA.
4. **Files and Records:** Contractor should provide final copies of all research, strategy, and other analytical memos, substantive correspondence, transaction discovery, written discovery and court filings to CMHA.
5. **Contractor Obligations to HUD:** Contractor has an obligation not to and shall not, interfere with, disrupt, or inappropriately delay or hinder any authorized monitoring, review, audit, or investigative activity of HUD, the General Accounting Office, or the officers and employees of HUD and the General Accounting Office. Contractor shall comply with all applicable regulations pertaining to access to books, documents, papers, and records. Nothing contained herein shall limit or diminish Contractor's professional and ethical duty to CMHA.
 - 5.1. Contractor shall make available for inspection and copying, by HUD, the General Accounting Office, and the officers and employees of HUD and the General Accounting Office all invoices, detailed billing statements, and evidence of payment thereof relating to Contractors engagement except that Contractor shall have no duty to take any action it deems a violation of the applicable professional rules of conduct.
6. **Email:** Contractor will use discretion in all email communications. All privileged email communications should be prominently labeled as confidential.

7. Legal Fees, Statements, Costs and Adjustments

7.1. Legal Fees: CMHA agrees to pay for legal services on a basis set forth in the Contract Documents within approximately 30 days of receipt of properly completed invoices or acceptance of deliverable, whichever is later. If services are to be billed at an hourly rate specified only for the principal attorney, other attorneys and law clerks in the firm will be billed at rates proportionate to that of the principal attorney and commensurate with their experience and skills. Quoted hourly rates are good for the term of the Contract.

7.2. Legal Research: It is frequently necessary to investigate facts or pursue legal theories. CMHA will be billed for all hours reasonably expended on its behalf. Contractor shall obtain prior authorization for more than eight (8) hours of legal research on a single issue. Copies of memoranda prepared as a result of any research charged to CMHA shall be promptly provided to CMHA. Research memoranda should be accurate, organized and readily comprehensible.

7.3. Statements, Payments and Interest. All invoices must include the purchase order number and the date the invoice was sent to CMHA. 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. If Contractor performs services without a Purchase Order, CMHA shall not be required to pay Contractor for those services. In addition, the billing statement must include a detail and summary portion as follows:

7.3.1. Detail Portion of Statement: The detailed portion must include: an itemized dated and detailed description of each legal service performed; the name and bill rate of the person performing the service; the amount of time spent performing the service; an itemized statement of expenses.

7.3.2. Summary Portion of Statement: The summary portion of the statement must include total hours worked during the billing period by each attorney and paralegal; any sums outstanding from prior invoices; a summary of all fees and expenses incurred from the inception of the matter through the end of the billing period

7.3.3. Collective Matters: If Contractor is working on multiple matters for CMHA, the invoices may be submitted collectively. However each page of the invoice must include the Contractor's name and the specific matter addressed on that page.

7.3.4. Invoices shall be submitted to Accounts Payable monthly either via e-mail to accounts.payable@cintimha.com or via mail to Cincinnati Metropolitan Housing Authority, Attention: Finance, 1635 Western Avenue, Cincinnati, Ohio 45214 for CMHA or to touchstoneap@cintimha.com for Touchstone Property Services.

The exception is invoices for development deals which shall be submitted before the financial closing of the deal to Geri Hernandez, Geri.Hernandez@cintimha.com.

8. Case Management:

- 8.1.** Contractor is authorized to take all actions which it deems advisable within the scope of representation, except to settle or otherwise dispose of any particular case. Contractor will notify CMHA of all significant developments and consult with CMHA in advance as to any significant decisions, except in emergencies where it is imperative a decision must be made without advance consultation.
- 8.2.** The assertion of any defenses or affirmative claims is dependent upon Contractor's investigation and conclusion that such defenses or claims are well grounded in fact and warranted by existing law or a good faith argument for the extension, modification or reversal of existing law.
- 8.3.** Contractor shall delegate the work in a manner that ensures the most efficient and productive combination of expertise and economy.
- 8.4.** Collaboration with CMHA: CMHA is best served by a close and collaborative relationship with its Legal Service Providers. CMHA looks to Contractor for its expertise, as well as its judgment, skills and creativity. To facilitate collaboration, Contractor shall keep CMHA fully and timely apprised of all significant developments and consult with CMHA on all significant decision concerning legal tactics and strategy.
- 8.5.** Throughout the course of representation, Contractor will send CMHA pleadings, documents, correspondence, and other information pertinent to its representation of CMHA.
- 8.6.** When services conclude, including by reason of withdrawal or termination, Contractor, upon CMHA's request, will deliver the files along with any of CMHA's funds or property remaining in Contractor's possession.

8.7. Any funds Contractor holds in trust for CMHA shall be placed in a separate interest bearing account or in an IOLTA account.

9. **Limitations on Representation.** Contractor shall have no duty to take actions on CMHA's behalf which violate court rules or professional standards of ethics. During the pendency of this Agreement, Contractor shall not, without approval of CMHA and the United States Department of Housing and Urban Development, represent any officer or employee of CMHA, in his or her individual capacity, in connection with potential civil liability or criminal conduct issues related to CMHA operations.



Instructions to Proposers (ITP) Table of Contents

Section	Description	Page
	Reservation of Rights	2
1.0	General Conditions	3
1.1	Applicability	3
1.2	Definitions	3
1.3	Pre-Proposal Conference/Walk-thru	5
1.4	Questions Regarding the RFP and Proposer's Responsibilities	5
2.0	Conditions To Propose	5
2.1	Pre-qualification of Proposers	5
2.2	RFP Forms, Document Specifications and Drawings	6
2.3	Proposal Preparation, Submission and Receipt by the Authority	7
2.4	Exceptions to Specifications	12
2.5	Lump Sum Cost Breakdown (LSCB)	12
3.0	Proposal Evaluation	13
3.1	Proposal Opening Results	13
3.2	Initial Evaluation for Responsiveness	13
3.3	Evaluation Committee	13
3.4	Mistake in Proposal Submitted	14
3.5	Irregular Proposal Submitted	14
3.6	Evaluation Method	14
3.7	Evaluation Scoring	15
3.8	Award of Proposal(s)	16
3.9	Rejection of Proposals	17
3.10	Cancellation of Award	18
3.11	Disqualification of Proposers	18
3.12	Burden of Proof	19
4.0	Right To Protest	19
4.1	Rights	19
4.2	Administrative Powers	19
4.3	Procedure to Protest	20
5.0	Additional Considerations	21
5.1	Estimated Quantities	21
5.2	Lobbying Certificate	22
5.3	Contract Conditions	22
5.4	Headings	23

THE AUTHORITY'S RESERVATION OF RIGHTS:

- 1.** The Authority reserves the right to reject any or all proposals, to waive any informality in the RFP process, or to terminate the RFP process at any time, if deemed by the Authority to be in its best interests.
- 2.** The Authority reserves the right not to award a contract pursuant to this RFP and issue subsequent RFP's if in the Authority's best interest.
- 3.** The Authority reserves the right to terminate a contract awarded pursuant to this RFP at any time for its convenience upon 10 days written notice to the successful proposer(s).
- 4.** The Authority reserves the right to require additional information from any Respondent to assist in its evaluation. The information shall be submitted in the form required by the Authority within two (2) days of written request or the proposal shall be deemed non-responsive.
- 5.** The Authority reserves the right to retain all proposals submitted and not permit withdrawal for a period of 90 days subsequent to the deadline for receiving proposals without the written consent of the Authority's Procurement Officer (PO).
- 6.** The Authority reserves the right to negotiate any fees proposed by all respondents.
- 7.** The Authority reserves the right to reject and not consider any proposal that does not meet the requirements of this RFP, including but not necessarily limited to incomplete proposals and/or proposals offering alternate or non-requested services, proposals deemed non-responsive, respondents deemed not responsible, and conditional proposals.
- 8.** The Authority shall have no obligation to compensate any proposer for any costs incurred in responding to this RFP.
- 9.** The Authority reserves the right to contact any individuals, entities, or organizations that have had a business relationship with the respondent regardless of their inclusion in the reference section of the proposal submitted, including any previous business conducted with the Cincinnati Metropolitan Housing Authority.
- 10.** The Authority reserves the right to a minimum acceptance period of 90 calendar days. "Acceptance Period" means the number of calendar days available to the Authority for awarding a contract from the date specified in this solicitation for the receipt of proposals.
- 11.** The Authority shall reserve the right to at any time during the RFP or contract process to prohibit any further participation by a proposer or reject any proposal submitted that does not conform to any of the requirements detailed herein. By accessing the Authority's Internet Website (hereinafter, the "noted Internet System" or the "System") and by downloading this document, each prospective proposer is thereby agreeing to abide by all terms and conditions listed within this document and within the noted Internet System, and further agrees that he/she will inform the PO in writing within 5 days of the discovery of any item listed herein or of any item that is issued thereafter by the Authority that he/she feels needs to be addressed. Failure to abide by this time frame shall relieve the Authority, but not the prospective proposer, of any responsibility pertaining to such issue.

1.0 GENERAL CONDITIONS:

1.1 Applicability: If referred to within the text of such, these ITP (Instructions to Proposers) shall be applicable to all Requests for Proposals (RFP) solicitations that the Cincinnati Metropolitan Housing Authority (the Authority) conducts and shall be applicable to any contract that the Authority awards to or signs with any firm, agency or individual pursuant to that RFP. A copy of these ITP shall be made available to any actual or prospective proposer, or contractor who does business with or intends to do business with the Authority.

1.1.1 Unless otherwise specified within the RFP or contract documents, in the event that any provision in any document listed herein conflicts with any provision within these ITP, the provision in the RFP or contract document shall govern. Further, in the case of any attached HUD forms (more specifically: HUD-5369-C (8/93); and HUD-5370-C Section I and/or Section II), the information within such HUD form(s) shall govern any other information issued, especially that issued within any Authority-created forms that are issued as a part of this solicitation.

1.2 Definitions (pertaining to all RFP documents issued by the Authority pertaining to this RFP, including the attachments and the ensuing contract):

1.2.1 "**Contracting Officer**" when named within an RFP document shall refer to either the CEO or the person he/she has delegated such responsibilities to.

1.2.2 "**Contract**" refers to the fully executed written agreement that ensues from the RFP. Whereas all RFP documents are included, by reference, as a part of the ensuing contract, when "contract" is referred to within the RFP document, such is referring to both the RFP documents and the ensuing contract document.

1.2.3 "**Contractor**" and the term "successful proposer" may be used interchangeably.

1.2.4 "**Days**" unless otherwise directed, shall refer to calendar days.

1.2.5 "**CEO**" is the Authority Chief Executive Officer.

1.2.6 "**The Authority**" is the Cincinnati Metropolitan Housing Authority, its instrumentalities and affiliates. Unless otherwise defined herein or within the ensuing contract, whenever the term "the Authority" is used without clearly designating a responsible Authority staff person, the proposer(s) shall assume that responsibility for that item rests with the PO.

1.2.7 "**HUD**" is the United States Department of Housing and Urban Development. HUD is the Federal agency that the Authority receives some funding from; however, pertaining to this RFP, correspondences, including proposal submittals, received from each proposer must exhaust all provisions contained herein prior to contacting HUD (i.e. in the case of a protest).

- 1.2.8** **"Herein"** shall refer to all documents issued pursuant to the noted RFP, including the RFP documents and the attachments.
- 1.2.9** **"Offer"** is the proposal submittal referred to within the following Section 1.2.14 that the proposer delivers to the Authority in response to the RFP.
- 1.2.10** **"Offeror" or "Offerors"** are the persons or firm which submit a proposal in response to a request for proposal.
- 1.2.11** **"Parties"** - When "the parties," "both parties" or "either party" is stated within the RFP documents or the contract, such refers to the Authority and the successful proposer(s).
- 1.2.12** **"PO"** – is the procurement office.
- 1.2.13** **"Proposal" and/or "Proposal Submittal"** is the document that the proposer is required to, as detailed within the RFP document, deliver to the Authority.
- 1.2.14** **"Protestor"** is a prospective proposer or proposer who feels that he/she has been treated inequitably by the Authority and wishes the Authority to correct the inequitable condition or situation. To be eligible to file a protest with the Authority pertaining to an RFP or contract, the protestor must have been involved in the RFP process in some manner as a prospective proposer (i.e. registered and received the RFP documents).
- 1.2.15** **"Prospective Proposer" or "Proposer"** - A prospective proposer is a firm or individual who has been notified of the RFP solicitation and/or who has downloaded, requested and/or received the RFP documents and is considering responding with a proposal; a proposer is a firm or individual who has submitted a proposal in response to the RFP. All terms and conditions shall apply equally to all prospective proposers as well as proposers, though prospective proposers may not, after the deadline set for receiving proposals, receive further notices pertaining to that RFP--meaning, certain notices (such as the Notice of Results of Evaluation) are typically only delivered to proposers and not to all prospective proposers.
- 1.2.16** **"Request for Proposals" (RFP)** is the competitive proposal process allowed by HUD, especially as defined within Chapter 7 of HUD Procurement Handbook 7460.8 REV 2.
- 1.2.17** **"RFP Document(s)"** - Whether stated in the singular or the plural, such refers to the body of documents, including attachments and the information posted on the cintimha.com Internet System (hereinafter, the "noted Internet System" or the "System"), that the Authority makes available to all prospective proposers wherein is detailed the Authority's requirements.

1.2.18 “Solicitation” or “Competitive Solicitation” is the RFP process detailed herein.

1.3 Pre-Proposal Conference/Walk-thru: A pre-proposal conference or walk-through may be scheduled. Pursuant to HUD regulations, the pre-proposal conference or walk-through is not mandatory, but is recommended. Potential proposers planning to attend should notify the Procurement Department at procurement@cintimha.com of their intention to do so 24 hours in advance. The purpose of the conference is to assist prospective proposers in having a full understanding of the RFP requirements so that he/she feels confident in submitting an appropriate proposal; therefore, at this conference the PO will conduct an overview of the RFP documents, including attachments. Whereas the purpose of this conference is to review the RFP documents, attendees should bring a copy of the RFP documents with them; however, the Authority *will not* distribute at this conference any copies of the RFP documents.

1.4 Questions Regarding the RFP and Proposer's Responsibilities--Contact with the Authority: It is the responsibility of the proposer to address all communication and correspondence pertaining to this RFP process to the PO only. Proposers must not make inquiry or communicate with any other Authority staff member or official (including members of the Board of Commissioners) pertaining to this RFP. Failure to abide by this requirement may be cause for the Authority to not consider a proposal submittal received from any proposer who has not abided by this directive.

1.4.1 Addendum: All questions and requests for information must be addressed in writing to the Procurement Department. The PO will respond to all such inquiries in writing by addendum posted to the Authority website at <http://www.cintimha.com/business-opportunities.aspx>. Offerors are responsible for ensuring they receive all addenda. During the RFP solicitation process, the PO will NOT conduct any *ex parte* (a substantive conversation—“substantive” meaning, when decisions pertaining to the RFP are made—between the Authority and a prospective proposer when other prospective proposers are not present) conversations that may give one prospective proposer an advantage over other prospective proposers. This does not mean that prospective proposers may not contact the PO it simply means that, other than making replies to direct the prospective proposer where his/her answer has already been issued within the solicitation documents, the PO may not respond to the prospective proposer’s inquiries but will direct him/her to submit such inquiry in writing so that the PO may more fairly respond to all prospective proposers in writing by addendum.

1.4.2 It is the responsibility of interested Offerors to review the solicitation documents and all addenda posted associated to this RFP.

2.0 CONDITIONS TO PROPOSE:

2.1 Pre-Qualification of Proposers: Prospective proposers will not be required to pre-qualify in order to submit a proposal. However, all proposers will be required to submit adequate information showing that the proposer is qualified to perform the required

work (i.e. Profile of Firm Form and required resumes). Failure by the prospective proposer to provide the requested information may, at the Authority's discretion, eliminate that proposer from consideration, provided that all proposers were required to submit the same information (in the case of a successful proposer(s), these requirements shall also apply in the context of the successful proposer or proposers).

2.2 RFP Forms, Documents, Specifications and Drawings:

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

2.2.2 Each offeror shall furnish the information required by the solicitation; this includes but is not limited to completing and submitting all documents issued pursuant to this RFP. Offers signed by an agent shall be accompanied by evidence of that agent's authority. [HUD 5369 B §1]

2.2.3 All information presented in response to the RFP must be included in the submitted response. There can be no information that is linked to a website that requires reviewers to access the website for consideration of content. Any such conditions will not be considered as part of the Respondent's proposal or of any resulting contract.

2.2.4 Offers for services other than those specified will not be considered.

2.2.5 Unless otherwise instructed, specifications and drawings (if provided) do not purport to show all of the exact details of the work. They are intended to illustrate the character and extent of the performance desired under the proposed contract and may be supplemented or revised from time to time.

2.2.6 The Authority shall reserve the right to, prior to award, revise, change, alter or amend any of the instructions, terms, conditions, and/or specifications identified within the RFP documents issued, within any attachment or drawing, or within any addenda issued; such notice shall be made available or delivered in writing to each prospective and/or actual proposer.

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

2.2.6.2 Offerors shall acknowledge receipt of any amendments to this solicitation by signing and returning the amendment, by identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer, or any other method specified in the RFP documents. The Authority must receive the acknowledgement by the time specified for receipt of offers. [HUD 5369 B §3]

2.2.6.3 Such changes that are issued before the deadline for receipt of proposals shall be binding upon all prospective proposers.

2.2.6.4 Such changes that are issued after the receipt of proposals, but prior to award shall be binding upon all parties that have submitted proposals; however, such parties shall be allowed to reject such changes by, within 5 days of receipt of such written notice, withdrawing his/her proposal. Such withdrawal must be delivered, in writing, to the PO within the 5-day deadline period.

2.3 Proposal Preparation, Submission and Receipt by the Authority:

2.3.1 Required Forms: All required forms furnished by the Authority as a part of the RFP document issued shall, as instructed, be fully completed and submitted by the proposer. Such forms may be completed in a legible handwritten fashion, by use of a typewriter, or may be downloaded and completed on a computer. If, during the download, a form becomes changed in any fashion, the proposer must "edit" the form back to its original form (for example, signature lines must appear on the page the line was originally intended to be on).

2.3.2 Manner of Submission: The proposal submittal shall be submitted in the manner detailed within the RFP document. Failure to submit the proposal in the manner specified may result in a premature opening of, post-opening of, or failure to open and consider that proposal, and may, at the discretion of the PO, eliminate that proposer from consideration for award. [See HUD 5369 B §2]

~~**2.3.2.1 Proposal Submittal Binding Method:** It is preferable and recommended that the proposer bind the proposal submittal in such a manner that the Authority can, if needed, remove the pages from the cover (i.e. 3-ring binder, etc.) to make copies then conveniently return the proposal submittal to its original condition.~~

~~**2.3.2.2 Cost Proposal (if applicable):** The proposed Fees shall be submitted by the proposer utilizing the fee submittal form and received by the Authority in a separate, sealed envelope along with the proposal. Then envelope shall be labeled with: the Proposer's name, the solicitation number, the solicitation name, the due date, and "Fee Submission Form."~~

2.3.2.2.1 The cost shall be a firm fixed price inclusive of all elements required to deliver the services, including but not limited to: employee costs and benefits, clerical support, supplies, materials, licensing, insurance, fuel surcharges, truck fees, franchise fees, etc. Please note that such cost is inclusive of all

elements required to provide these services as specified herein and each fee proposed shall be fully “burdened” with profit and overhead costs.

2.3.2.2.2 Authorization of Offeror: The Cost Proposal (Attachment B) must be signed by a representative of the Offeror who is legally authorized to enter into a contractual relationship in the name of the Offeror.

~~**2.3.2.3** Offers shall be enclosed in a package such as a sealed envelope or box and addressed to the office specified in the solicitation. The proposal shall show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror, on the face of the package. [HUD 5369 B §9]~~

~~**2.3.2.4** It is very important that the offer be properly identified on the face of the envelope as set forth above in order to insure that the date and time of receipt is stamped on the face of the offer envelope. Receiving procedures are: date and time stamp those envelopes identified as proposals and deliver them immediately to the appropriate contracting official. [HUD 5369 B §9]~~

2.3.2.5 **Submission Conditions:** DO NOT FOLD OR MAKE ANY ADDITIONAL MARKS, NOTATIONS OR REQUIREMENTS ON THE DOCUMENTS TO BE SUBMITTED! Proposers are not allowed to change any requirements or forms contained herein, either by making or entering onto these documents or the documents submitted any revisions or additions; and if any such additional marks, notations or requirements are entered on any of the documents that are submitted to the Authority by the proposer, such may invalidate that proposal. If, after accepting such a proposal, the Authority decides that any such entry has not changed the intent of the proposal that the Authority intended to receive, the Authority may accept the proposal and the proposal shall be considered by the Authority as if those additional marks, notations or requirements were not entered on such. By accessing the noted Internet System and downloading these documents, each prospective proposer that does so is thereby agreeing to confirm all notices that the Authority delivers to or makes available to him/her as instructed, and by submitting a proposal, the proposer is thereby agreeing to abide by all terms and conditions published herein and by addendum pertaining to this RFP.

2.3.2.6 **Submission Responsibilities:** It shall be the responsibility of each proposer to be aware of and to abide by all dates, times,

conditions, requirements and specifications set forth within all applicable documents issued by the Authority, including the RFP document, the Attachments to the RFP, and any addenda and required attachments submitted by the proposer. By virtue of completing, signing and submitting the completed documents, the proposer is stating his/her agreement to comply with all conditions and requirements set forth within those documents. Written notice from the proposer not authorized in writing by the PO to exclude any of the Authority requirements contained within the documents may cause that proposer to not be considered for award.

2.3.3 Time for Receiving Proposals: Proposals received prior to the time set as the deadline for the receipt by the Authority of the proposal submittal shall be securely kept, unopened, by the Authority. The PO, whose duty it is to open such proposals, will decide when the specified time has arrived. No proposal received after the designated deadline shall be considered, except as detailed as detailed below; or if the bid response, modification, or withdrawal would have been timely but for the action or inaction of the Authority personnel. When deemed as late, a bid response, modification, or withdrawal shall be marked as "late", remain sealed and shall be retained in the bid file

2.3.3.1 Proposers are cautioned that any proposal submittal that may be time-stamped as being received by the Authority after the exact time set as the deadline for the receiving of proposals shall be returned unopened to the proposer. Any such proposals inadvertently opened shall not be considered, but shall be ruled to be invalid. No responsibility will attach to the Authority or any official or employee thereof, for the pre-opening of, or the failure to open a proposal not properly addressed and identified.

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

2.3.3.2.1 Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

2.3.3.2.2 Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the Authority that the late receipt was due solely to mishandling by the Authority after receipt at the Authority;

- 2.3.3.2.3** Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term 'working days' excludes weekends and U.S. Federal holidays;
- or
- 2.3.3.2.4** Is the only offer received.
- 2.3.3.3** Any modification of an offer, except a modification resulting from the Authority's request for "best and final" offer (if this solicitation is a request for proposals), is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.
- 2.3.3.4** A modification resulting from the Authority's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the Authority after receipt at the Authority.
- 2.3.3.5** The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.
- 2.3.3.6** The only acceptable evidence to establish the time of receipt at the Authority is the time/date stamp of the Authority on the offer wrapper or other documentary evidence of receipt maintained by the Authority.
- 2.3.3.7** The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has

the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

2.3.3.8 Notwithstanding paragraph 2.3.3.2 of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the Authority will be considered at any time it is received and may be accepted.

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

[HUD 5369 B §6] Negligence on the part of the proposer in preparing his/her proposal confers no right of withdrawal or modification of his/her proposal after such proposal has been received and opened.

2.3.4 No Public Opening of Proposals: Pursuant to the competitive proposals or RFP process, proposals are not publicly opened, but are held secure until the submittal deadline has passed. The proposals are then opened in private by the PO (or his/her designee) and are, pursuant to the evaluation plan, examined for minimal responsiveness (i.e. minimum compliance with the requirements of the RFP). Persons other than the Authority staff involved in this process are not allowed to be present during the opening, nor may they inspect the proposals until after award has been completed.

2.3.5 Conflicting Conditions: Any provisions detailed within any of the RFP documents which may be in conflict or inconsistent with any of the paragraphs in any of the other RFP documents, including attachments, shall be void to the extent of any such conflict or inconsistency. Further, as stated within Section 1.1.1 of this ITP, unless otherwise specified within the RFP or contract documents, in the event that any provision in any document listed herein conflicts with any provision within this ITP, the provision in the RFP or contract document shall govern.

2.3.6 Interpretations: No official oral interpretation can be made to any proposer as to the meaning of any instruction, condition, specifications drawing (if any), or any other document issued pertaining to this RFP. Every request for an official interpretation shall be made by the prospective proposer, in writing, pursuant to the schedule set within the RFP document issued and as directed by the Authority. Official interpretations will be issued in the form of addenda, which

will be available to each proposer; but it shall be the prospective proposer's responsibility to make inquiry as to addenda issued. All such addenda shall become a part of the RFP documents and the proposed contract with the successful proposer, and all proposers shall be bound by such addenda, whether or not received by the prospective or successful proposer(s). Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offerors. [HUD 5369 B §4]

2.4 Exceptions to Specifications:

2.4.1 A proposer may take exception to any of the proposal documents or any part of the information contained therein, by submitting, in writing to the PO, **at least 10 days prior to the proposal deadline**, a complete and specific explanation as to what he/she is taking exception to. Proposed alternate documents or information must also be included. A response by the Authority will be issued in writing within 5 days of receipt of such exception request. The Authority reserves the right to agree with the prospective proposer and issue a revision to the applicable RFP requirements, or may reject the prospective proposer's request.

2.4.2 When taking exception, prospective proposers must propose services that meet the requirements of the RFP documents. Exceptions to the specification and/or approved "equal" requests may be discussed at the scheduled pre-proposal conference (if scheduled). All verbal instructions issued by the Authority officers not already listed within the RFP documents shall only become official when issued as addenda or as a written answer issued pursuant to receipt of a written question.

2.5 Lump Sum Cost Breakdown (LSCB):

2.5.1 The Authority reserves the right to, at any time, request and receive from any or all proposers a LSCB of any or all of the costs proposed. The proposal documents constitute an outline of the work to be completed by the proposer. These documents are intended to include all major items, and the lump sum cost breakdown computed therefrom will be the maximum compensation for all work and materials whatsoever furnished by the proposer in order to comply with the proposal documents in their present form, whether or not indicated in the approximate quantities or pertaining to the items of work as listed.

2.5.1.1 The purpose of this LSCB will serve the Authority in two distinct areas:

2.5.1.1.1 **Prior to award of proposals:** the Authority may request a LSCB for any or all items reflected

within the RFP document as “lump sum” for the purpose of determining an unbalanced cost proposal. The PO, using acceptable methods dictated by the industry, shall conduct the analysis.

2.5.1.1.2 **After award:** the Authority may request a LSCB for any or all items reflected within the RFP document as “lump sum” for the purpose of making partial payments to the successful proposer.

2.5.1.1.3 Under no circumstances, may any cost item reflected as “lump sum” be increased/decreased as a result of the LSCB analysis.

3.0 PROPOSAL EVALUATION:

3.1 Proposal Opening Results: It is understood by all proposers/prospective proposers that the proposals received are not publicly opened and the results will typically not be a matter of public record until the Authority has concluded all evaluations, has chosen a final top-rated proposer, has completed the award and is ready to issue such results. When the Authority issues such notice, the Authority will inform all proposers as to who was awarded the contract and the dollar amount of the contract.

3.2 Initial Evaluation for Responsiveness: Each proposal received will first be evaluated for responsiveness (e.g., meets the minimum of the published requirements). The Authority reserves the right to reject any proposals deemed by the Authority not minimally responsive. Each proposal will be evaluated on the factors described in the solicitation. The Authority intends to award a contract to the Proposer(s) with the highest ranking scores and whose qualifications and fee proposals the Authority determines is most advantageous to the Authority.

3.1.1 All proposal documents submitted by the proposers are not necessarily a matter of public record and as a matter of normal course, the proposals submitted by each proposer will not, until after award has been completed, be available to be viewed by any interested parties except as approved by the Authority’s Legal Counsel (i.e. a proposer will not, prior to completion of award, be allowed to challenge an apparent top-rated proposer by inspecting the proposal that the apparent top-rated proposer submitted). The Authority shall, however, upon request, verify that the proposal documents submitted are/were acceptable.

3.3 Evaluation Committee: The Authority anticipates that it will select a minimum of a three-person committee to evaluate each of the responsive proposals submitted in response to this RFP. PLEASE NOTE: No proposer shall be informed at any time

during or after the RFP process as to the identity of any evaluation committee member. If, by chance, a proposer does become aware of the identity of such person(s), he/she SHALL NOT make any attempt to contact or discuss with such person anything related to this RFP. The designated PO is the only person at the Authority that the proposers shall contact pertaining to this RFP. Failure to abide by this requirement may (and most likely will) cause such proposer(s) to be eliminated from consideration for award.

3.4 Mistake in Proposal Submitted:

3.4.1 A request for withdrawal of a proposal due to a purported error need not be considered by the Authority unless the same is filed in writing by the proposer within 48 hours after the proposal deadline (proposers may of their own volition withdraw a proposal prior to the submittal deadline). Any such request shall contain a full explanation of any purported error and shall, if requested by the Authority, be supported by the original calculations on which the proposal was computed, together with a certification and notarization thereon that such computation is the original and prepared by the proposer or his/her agent, who must be identified on the notarized form. The foregoing shall not be construed that such withdrawal will be permitted, as the Authority retains the right to accept or reject any proposal withdrawal for a mistake.

3.4.2 Unless otherwise prohibited within the RFP documents, a mistake in the cost unit pricing that does not affect the total cost sum submitted may, at the Authority's discretion, be corrected by submitting a corrected cost form, together with a complete explanation in writing, of how the mistake occurred, to the PO, for his/her review. This mistake must be corrected before the issuance of contract documents. If a bidder appears to have made a mistake, the Contracting Officer should immediately notify a bidder of any apparent mistake in his/her bid and request verification of the bid as submitted.

3.5 Irregular Proposal Submittal: A proposal shall be considered irregular for any one of the following reasons, any one or more of which may, at the Authority's discretion, be cause for rejection:

3.5.1 If the forms furnished by the Authority are not used or are altered or if the proposed costs are not submitted as required and where provided.

3.5.2 If all requested completed attachments do not accompany the proposal submitted.

3.5.3 If there are unauthorized additions, conditional or alternate proposals, or irregularities of any kind which may tend to make the proposal incomplete, indefinite or ambiguous as to its meaning or give the proposer submitting the same a competitive advantage over other proposers.

3.5.4 If the proposer adds any provisions reserving the right to accept or reject any award or to enter into a contract pursuant to an award.

3.6 Evaluation Method:

3.6.1 Evaluation Packet for Proposals Deemed Responsive: Internally, an evaluation packet will be prepared for each evaluator, including the following documents:

- 3.6.1.2 Instructions to Evaluators;
- 3.6.1.3 Proposal Tabulation Form;

3.6.1.4 Copy of all pertinent RFP documents.

3.6.2 Evaluation: The PO will evaluate and award points pertaining to the Proposed Fees and the Economic Inclusion Participation Factors. The appointed evaluation committee, independent of the PO or any other person at the Authority, shall evaluate the responsive proposals submitted and award points pertaining to the other evaluation factors. Upon final completion of the proposal evaluation process, the evaluation committee will forward the completed evaluations to the PO.

3.7 Evaluation Scoring: Each evaluation factor will be scored on a zero to five scale. The scores will then be averaged for each evaluation factor and then the weighted average score for each evaluation factor will be combined to calculate the overall score.

Score	Description
5	Total Applicability/Excellent: The proposal exceeds all the requirements of the RFP and Specifications in a highly competent and superior manner.
4	Substantial Applicability/Above Average: The proposal meets all the requirements of the RFP and Specifications and, in some respects, exceeds them.
3	Average Applicability: The proposal adequately meets most of the requirements of the RFP and scope. It accomplishes many, but not all of the requirements stated in the RFP and specifications.
2	Limited Applicability/Below Average: The proposal meets some of the requirements of the RFP and scope but contains some deficiencies. The proposal accomplishes some, but not all of the purposes stated in the RFP and specifications.
1	Minimum Responsiveness/Poor: The proposal scarcely meets the requirements and contains many deficiencies. The required documentation is in many respects inadequate, methodologically unsound or scarcely accomplishes the purpose stated in the RFP and specifications.
0	Non-responsive: A zero value typically constitutes no response or an inability of the vendor to meet the minimum requirement as set forth in submitting the RFP criterion.

3.7.1 Determination of Top-ranked Proposer: Typically, the subjective points awarded by the evaluation committee will be combined with the objective points awarded by the PO to determine the final rankings. Contract negotiations may, at the Authority's option, be conducted prior to or after the BOC approval.

3.7.1.1 Ties: In the case of a tie in points awarded, the award shall be decided as detailed within Section 6.12.C of HUD Procurement Handbook 7460.8 REV 2, by “drawing lots or other random means of selection.”

3.7.2 Restrictions: All persons having familial (including in-laws) and/or employment relationships (past or current) with principals and/or employees of a proposer entity will be excluded from participation on the Authority evaluation committee. Similarly, all persons having ownership interest in and/or contract with a proposer entity will be excluded from participation on the Authority evaluation committee.

3.8 Award of Proposal(s): The successful proposer shall be determined by the top-rated responsive and responsible proposer as determined by the evaluation process, provided his/her proposal is reasonable, he/she is able to deliver the specified items in a timely manner and it is, in the opinion of the Authority, to the best interests of the Authority to accept the proposal. All proposers will be notified in a timely manner of the results of the evaluation after award has been completed.

3.8.1 THE AUTHORITY may:

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

3.8.2 Notice of Results of Evaluation: If an award is completed, all proposers will receive by e-mail a Notice of Results of Evaluation. Such notice shall inform all proposers of:

- Which proposer received the award;
- Each proposer's right to a debriefing and to protest.

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

- Have adequate financial resources to perform the contract, or the ability to obtain them;
- Have a satisfactory performance record;
- Have a satisfactory record of integrity and business ethics;
- Have a satisfactory record of compliance with public policy (e.g., Equal Employment Opportunity); and
- Not have been suspended, debarred, or otherwise determined to be ineligible for award of contracts by the Department of

Housing and Urban Development or any other agency of the U.S. Government. Current lists of ineligible contractors are available for inspection at the HA/HUD. [HUD 5369 B §5]

- 3.8.4** Before an offer is considered for award, the offeror may be requested by THE AUTHORITY to submit a statement or other documentation regarding any of the foregoing requirements. Failure by the offeror to provide such additional information may render the offeror ineligible for award.
- 3.8.5** THE AUTHORITY will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to THE AUTHORITY, cost or price and other factors, specified elsewhere in this solicitation, considered.
- 3.8.6** **Potential "Competitive Range" or "Best and Finals" Negotiations:** The Authority reserves the right to, as detailed within Section 7.2.N through Section 7.2.R of HUD Procurement Handbook 7460.8 REV 2, conduct a "Best and Finals" Negotiation, which may include oral interviews, with all firms deemed to be in the competitive range. Any and all interviews are at the sole discretion of the Authority.
- However, the Authority may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint
- 3.8.7** A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. If this solicitation is a request for proposals, before the offer's specified expiration time, the HA may accept an offer, whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counter offer by THE AUTHORITY.
- 3.8.8** Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract. [HUD 5369 B § 7]

3.9 Rejection of Proposals:

- 3.9.1** The Authority reserves the right to, at any time during the proposal process, reject any or all proposals received. In the case of rejection of all proposals, the authority reserves the right to advertise for new proposals or to proceed to do the work otherwise, if in the judgment of the Authority, the best interest of the Authority will be promoted.

- 3.9.2** Prospective proposers acknowledge by downloading and receiving the RFP documents and/or by submitting a proposal that the submission of a proposal to the Authority is not a right by which to be awarded that proposal, but merely an offer by the prospective proposer to perform the requirements of the RFP documents in the event the Authority decides to consider an award to that proposer.
- 3.10 Cancellation of Award:** the Authority reserves the right to, without any liability, cancel the award of any proposal(s) at any time before the execution of the contract documents by all parties.
- 3.11 Disqualification of Proposers:** Any one or more of the following shall be considered as sufficient for the disqualification of a proposer and the rejection of his/her proposal:
- 3.11.1** Evidence of collusion among prospective proposers. Participants in such collusion will receive no recognition as bidders or proposers for any future work of the Authority until such participant shall have been reinstated as a qualified proposer or proposer. The names of all participants in such collusion shall be reported to HUD and any other inquiring governmental agency.
- 3.11.2** More than one proposal for the same work from an individual, firm, or corporation under the same or different name(s), unless such was specifically allowed by the Authority within the proposal documents issued, including by addendum.
- 3.11.3** Lack of competency, lack of experience and/or lack of adequate machinery, plant and/or other resources.
- 3.11.4** Documented unsatisfactory performance record as shown by past work for the Authority or with any other local, State or Federal agency, judged from the standpoint of workmanship and progress.
- 3.11.5** Incomplete work, which in the judgment of the Authority, might hinder or prevent prompt completion of additional work, if awarded.
- 3.11.6** Failure to pay or satisfactorily settle all bills due on former contracts still outstanding at the time of letting.
- 3.11.7** Failure to comply with any qualification requirement of the Authority.
- 3.11.8** Failure to list, if required, all subcontractors (if subcontractors are allowed by the Authority) who will be employed by the successful proposer(s) to complete the work of the proposed contract.
- 3.11.9** As required by the RFP documents, failure of the successful proposer to be properly licensed by the City of Cincinnati and/or Hamilton County, Ohio

and/or the State of Ohio and/or to be insured by a general liability and/or worker's compensation policy.

3.11.10 Any legal reason to be determined, in good faith, to be in the best interests of the Authority.

3.12 Burden of Proof: If requested by the Authority, it shall be the responsibility of the proposer(s) to furnish the Authority with sufficient data or physical samples, within a specified time, so that the Authority may determine if the goods or services offered conform to the Specifications.

3.12.1 Right to Negotiate Final Fees: THE AUTHORITY shall retain the right to negotiate the amount of fees that are paid to the successful proposer, meaning the fees proposed by the top-rated proposer may, at THE AUTHORITY's options, be the basis for the beginning of negotiations. Such negotiations shall begin after THE AUTHORITY has chosen a top-rated proposer. If THE AUTHORITY and such proposer can not arrive at a mutually agreed upon price or terms for the work to be performed, THE AUTHORITY shall retain the right to end such negotiations and begin negotiations with the next-rated proposer or cancel the solicitation in its entirety. THE AUTHORITY shall also retain the right to negotiate with and make an award to more than one proposer, as long as such negotiation(s) and/or award(s) are addressed in the above manner (i.e. top-rated first, then next-rated following until a successful negotiation is reached).

4.0 Right to Protest:

4.1 Rights: Any prospective or actual proposer, offeror, or contractor who is allegedly aggrieved in connection with the solicitation of a proposal or award of a contract, shall have the right to protest. An alleged aggrieved protestor claiming this right is hereby informed that these regulations do not provide for administrative appeal as a matter of right for that alleged aggrieved protestor.

4.1.1 An alleged aggrieved "protestor" is a prospective or actual proposer who feels that he/she has been treated inequitably by the Authority and wishes the Authority to correct the alleged inequitable condition or situation. To be eligible to file a protest with the Authority pertaining to an RFP or contract, the alleged aggrieved protestor must have been involved in the RFP process in some manner as a prospective proposer (i.e. registered and received the RFP documents) when the alleged situation occurred. The Authority has no obligation to consider a protest filed by any party that does not meet these criteria.

4.2 Administrative Powers: It is totally within the administrative powers of the CEO to grant or deny any requests for administrative appeal. If, in the opinion of the CEO, the alleged aggrieved protestor merits an administrative review, the CEO shall direct that alleged aggrieved protestor to submit additional data.

4.3 Procedure to Protest: An alleged aggrieved protestor shall comply with the following protest procedures, and failure to comply in the manner prescribed shall automatically relieve the Authority from accepting or considering that protest:

4.3.1 The alleged aggrieved protestor must file, in writing, to the PO the exact reason for the protest, attaching any supportive data. The protestor must state within the written protest document specifically (not by inference) what action by the Authority or condition is being protested as inequitable, making, where appropriate specific reference to the RFP documents issued. The protest document must also state the corrective action requested. Failure by the alleged aggrieved protestor to fully submit such information shall relieve the Authority from any responsibility to consider the protest and take any corrective action.

4.3.2 The written instrument containing the reason for the protest must be received by the PO within 10 days after the occurrence of any of the following:

4.3.2.1 the deadline for receiving proposals;

4.3.2.2 receipt of notification of the results of the evaluation or the award; or

4.3.2.3 the alleged aggrieved protestor knows or should have known the facts.

4.3.3 In any case, protests shall be filed no more than 10 days after any of the above (unless the occurrence being protested occurred in its entirety after the proposal deadline). Protests received after these dates shall not be considered.

4.3.4 The PO shall review the written protest and supportive data, if any. He/she shall, within 10 days after receipt of the written protest, issue a written opinion and decision. This document shall state the reasons for the action taken as well as inform the alleged aggrieved protestor of the right of further administrative review. A copy of this written opinion and decision shall be forwarded to the CEO.

4.3.5 The determination of the Authority with regard to such protest or to proceed to award notwithstanding such protest shall be final unless appealed by the protestor. [HUD 5369 B §8]

4.3.6 Administrative Appeal: If the alleged aggrieved protestor does not agree with the written opinion and decision issued by the PO, the alleged aggrieved protestor may, after receipt of the written opinion and decision issued by the PO request an administrative appeal hearing be granted (such request must be delivered in writing to the PO within 5 days of receipt of the written opinion and decision; failure to do so within such 5 days shall relieve the Authority of any responsibility to consider such request). The following procedures must be complied with in the manner prescribed; failure by the

alleged aggrieved protestor to comply shall automatically relieve the Authority from accepting or acting on that request for administrative hearing:

4.3.6.1 The alleged aggrieved protestor must file, in writing, his/her request for an administrative hearing, to the CEO, within 5 days of receipt of the written opinion and decision and failure to do so within such 5 days shall relieve the Authority of any responsibility to consider such request.

4.3.6.2 The request for an administrative appeal hearing must contain the specific reasons for the appeal and all supporting data for those reasons.

4.3.6.3 It shall be within the administrative powers of the CEO to, after review of the request submitted, grant or deny any request for administrative appeal.

4.3.6.4 If the CEO, after complete review of the alleged aggrieved protestor's written request and supporting data, decides that the request does not merit further consideration, he/she shall render his/her decision in writing to the alleged aggrieved protestor. A decision rendered under this paragraph shall be made within 10 days after the receipt of the alleged aggrieved protestor's request for an administrative hearing. This decision shall be final without further administrative recourse.

4.3.6.5 If the CEO, after review of the alleged aggrieved protestor's written request, decides that the request merits further consideration, he/she shall forward the protestor's written request, along with a cover letter explaining why it merits further consideration and with a recap of all proposals submitted and a copy of the original written protest, to the Authority's Legal Counsel for consideration. The Authority's Legal Counsel shall issue to the alleged aggrieved protestor a decision, in writing, within 10 days of his/her receipt of such documents.

4.3.5.5 Such written decision delivered to the alleged aggrieved protestor shall exhaust the Authority internal protest and administrative appeal process available to the alleged aggrieved protestor.

5.0 Additional Considerations:

5.1 Estimated Quantities: Unless otherwise stated within the RFP documents, the quantities reflected within the RFP documents, to the best of the Authority's knowledge, reflect projected consumption data. These quantities are not meant to infer

or imply actual consumption figures or quantities that will be purchased by the Authority under the finalized contract; but, pursuant to all RFP documents, these quantities will be used as calculation figures to determine the successful proposer.

5.2 Lobbying Certification: By proposing to do business with the Authority or by doing business with the Authority, each proposer certifies the following:

5.2.1 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.

5.2.2 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.

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

5.2.4 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.

5.3 Contract Conditions:

5.3.1 Contract Award Procedure: If a contract is awarded pursuant to this RFP, the following detailed procedures will be followed:

5.3.1.1 By completing, executing and submitting the Contract Award and Acceptance, the “proposer is thereby agreeing to abide by all terms and conditions pertaining to this RFP as issued by THE AUTHORITY, either in hard copy or on the noted System.”

5.3.2 Contract Conditions: The following provisions are considered mandatory conditions of any contract award made by THE AUTHORITY pursuant to this RFP:

5.3.2.1 Contract Form: THE AUTHORITY will not execute a contract on the successful proposer's form of contract and contracts will only be executed on THE AUTHORITY's form of contract and by submitting a proposal the successful proposer agrees to do so. See Attachment H for Professional Services Agreement General Terms and Conditions and Attachment A for Proposer's Statement.

5.3.2.2 Please note that THE AUTHORITY has no legal right or ability to (and will not) at any time negotiate any clauses contained within ANY of the HUD forms included as a part of this RFP.

5.4 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.

Last Revision Date: 9/24/2019