

INVITATION FOR BID (IFB) DOCUMENTS

SOLICITATION NO.

CA03NCVAA-030618, CA03NCVAB-030618, CA03NCVBA-030618, CA03NCVBB-030618,
CA03NCVCMA-030618, CA03NCVCMB-030618, CA04BAAA-030618, CA04BAAB-030618,
CA04BABA-030618, CA04BABB-030618, CA04BACMA-030618, CA04BACMB-030618,
CA05CVAA-030618, CA05CVAB-030618, CA05CVBA-030618, CA05CVBB-030618,
CA05CVCMA-030618, CA05CVCMB-030618, CA07CCAA-030618, CA07CCAB-030618,
CA07CCBA-030618, CA07CCBB-030618, CA07CCCMA-030618, CA07CCCMB-030618,
CA08SLAA-030618, CA08SLAB-030618, CA08SLBA-030618, CA08SLBB-030618,
CA08SLBC-030618, CA08SLBD-030618, CA08SLBE-030618, CA08SLBF-030618,
CA08SLCEA-030618, CA08SLCEB-030618, CA08SLCMA-030618, CA08SLCMB-030618,
CA08SLCRA-030618, CA08SLCRB-030618, CA09SIAA-030618, CA09SIAB-030618,
CA09SIBA-030618, CA09SIBB-030618, CA09SIBC-030618, CA09SIBD-030618, CA09SIBE-
030618, CA09SIBF-030618, CA09SICMA-030618, CA09SICMB-030618, CA09SICPA-030618,
CA09SICRA-030618, CA09SICRB-030618

INDEFINITE QUANTITY CONSTRUCTION CONTRACT



202 12th Street NE
Staples, MN 56479

Mr. Joseph Morgan
eziQC Lead Contract Administrator
eziqc@njpacoop.org

January 2018

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INDEFINITE QUANTITY CONSTRUCTION CONTRACT
(IQCC)
Invitation for Bid (IFB)

<i>Solicitation Number</i>	<i>License</i>	<i>Area</i>	<i>Bid Due Date and Time</i>	<i>Bid Deposit</i>	<i>Estimated Annual Value</i>	<i>Maximum Term</i>
CA03NCVAA-030618	A - General Engineering	Region 3 North Central Valley	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA03NCVAB-030618	A - General Engineering	Region 3 North Central Valley	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA03NCVBA-030618	B - General Building	Region 3 North Central Valley	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA03NCVBB-030618	B - General Building	Region 3 North Central Valley	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA03NCVCMMA-030618	C-20 - Mechanical	Region 3 North Central Valley	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA03NCVCMB-030618	C-20 - Mechanical	Region 3 North Central Valley	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA04BAAA-030618	A - General Engineering	Region 4 Bay Area	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA04BAAB-030618	A - General Engineering	Region 4 Bay Area	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA04BABA-030618	B - General Building	Region 4 Bay Area	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA04BABB-030618	B - General Building	Region 4 Bay Area	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA04BACMA-030618	C-20 - Mechanical	Region 4 Bay Area	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA04BACMB-030618	C-20 - Mechanical	Region 4 Bay Area	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA05CVAA-030618	A - General Engineering	Region 5 Central Valley	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA05CVAB-030618	A - General Engineering	Region 5 Central Valley	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA05CVBA-030618	B - General Building	Region 5 Central Valley	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA05CVBB-030618	B - General Building	Region 5 Central Valley	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA05CVCMA-030618	C-20 - Mechanical	Region 5 Central Valley	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA05CVCMB-030618	C-20 - Mechanical	Region 5 Central Valley	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years

NATIONAL JOINT POWERS ALLIANCE®
Book 1 – Project Information, Instructions to Bidders and Execution Documents

CA07CCAA-030618	A - General Engineering	Region 7 Central Coast	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA07CCAB-030618	A - General Engineering	Region 7 Central Coast	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA07CCBA-030618	B - General Building	Region 7 Central Coast	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA07CCBB-030618	B - General Building	Region 7 Central Coast	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA07CCMA-030618	C-20 - Mechanical	Region 7 Central Coast	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA07CCMB-030618	C-20 - Mechanical	Region 7 Central Coast	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA08SLAA-030618	A - General Engineering	Region 8 Southland	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA08SLAB-030618	A - General Engineering	Region 8 Southland	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA08SLBA-030618	B - General Building	Region 8 Southland	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA08SLBB-030618	B - General Building	Region 8 Southland	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA08SLBC-030618	B - General Building	Region 8 Southland	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA08SLBD-030618	B - General Building	Region 8 Southland	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA08SLBE-030618	B - General Building	Region 8 Southland	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA08SLBF-030618	B - General Building	Region 8 Southland	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA08SLCEA-030618	C-10 - Electrical	Region 8 Southland	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA08SLCEB-030618	C-10 - Electrical	Region 8 Southland	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA08SLCMA-030618	C-20 - Mechanical	Region 8 Southland	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA08SLCMB-030618	C-20 - Mechanical	Region 8 Southland	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA08SLCRA-030618	C-39 - Roofing	Region 8 Southland	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA08SLCRB-030618	C-39 - Roofing	Region 8 Southland	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA09SIAA-030618	A - General Engineering	Region 9 San Diego Imperial	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA09SIAB-030618	A - General Engineering	Region 9 San Diego Imperial	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA09SIBA-030618	B - General Building	Region 9 San Diego Imperial	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA09SIBB-030618	B - General Building	Region 9 San Diego Imperial	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA09SIBC-030618	B - General Building	Region 9 San Diego Imperial	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA09SIBD-030618	B - General Building	Region 9 San Diego Imperial	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA09SIBE-030618	B - General Building	Region 9 San Diego Imperial	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA09SIBF-030618	B - General Building	Region 9 San Diego Imperial	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA09SICMA-030618	C-20 - Mechanical	Region 9 San Diego Imperial	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA09SICMB-030618	C-20 - Mechanical	Region 9 San Diego Imperial	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years

NATIONAL JOINT POWERS ALLIANCE®
Book 1 – Project Information, Instructions to Bidders and Execution Documents

CA09SICPA-030618	C-33 – Painting	Region 9 San Diego Imperial	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA09SICRA-030618	C-39 - Roofing	Region 9 San Diego Imperial	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years
CA09SICRB-030618	C-39 - Roofing	Region 9 San Diego Imperial	4:30 PM CT 03/06/18	\$25,000	\$4,700,000	4 Years

See Section Four (4) for Map and list of Geographical Area

Bids for all contracts covered by this solicitation are due by
4:30 PM CT on March 06, 2018

At the offices of the
National Joint Powers Alliance®
202 12th Street NE, P.O. Box 219, Staples, MN 56479

The National Joint Powers Alliance® (NJPA) issues this Invitation For Bid (IFB) on behalf of, and to provide Indefinite Quantity Construction Contracting (IQCC) services to, all current and potential NJPA Members including all government agencies, education agencies to include colleges and universities, and non-profit agencies in the Imperial, San Diego, Southland, Central Coast, Central Valley, and Bay Areas in the State of California. It is the intention of NJPA to award multiple contracts for general building, general engineering, electrical, mechanical, roofing, and painting construction services in these areas. Each contract has an initial term of one (1) year and bilateral option provision for three (3) additional terms. The Estimated Annual Value is \$4,700,000. The total term of the Agreement cannot exceed four (4) years. One additional one-year renewal-extension may be offered by NJPA to Vendor beyond the original four (4) year term if NJPA deems such action to be in the best interests of NJPA and its Members.

This IFB consist of four Books:

- Book 1: Project Information, Instructions to Bidders and Execution Documents
- Book 2: IQCC Standard Terms and Conditions; General Terms and Conditions
- Book 3: Construction Task Catalog®
- Book 4: Technical Specifications

IQCC is a contracting procurement system that provides facility owner’s access to “on-call” contractors to provide immediate construction, repair and renovation services over an extended period of time.

Intending bidders are required to attend a pre-bid seminar which shall be conducted for the purpose of discussing the IQCC procurement system, the contract documents, and bid forms. Attendance at one of the seminars is a mandatory condition of bidding.

2/20/2018 10:00 A.M. San Diego Housing Commission, 4th Floor Conference Room 426
1122 Broadway,
San Diego, CA. 92101
Attendees meet on 5th floor lobby to be escorted to CM 426

NATIONAL JOINT POWERS ALLIANCE®
Book 1 – Project Information, Instructions to Bidders and Execution Documents

2/21/2018	10:00 A.M.	Riverside Centre, 1st Floor Business Centre 3403 10 th St. Riverside, CA 92501
2/22/2018	10:00 A.M.	Fresno City Hall, Room CH 4N-4017 2600 Fresno St. Fresno, CA. 93721
2/23/2018	9:00 A.M.	Louden Nelson Community Center, Room 7 301 Center Street Santa Cruz, CA. 95060

Intending bidders can pre-register for the pre-bid seminar by visiting our website at www.NJPA.co/eziqc-pre-bid-registration.

An electronic (CD) copy of the IFB Documents which include the instructions for submitting a bid and the bid documents may be obtained by letter of request to Joseph Morgan, NJPA, 202 12th Street NE, Staples, MN 56479, or by visiting our website at www.njpacoop.org/eziqc-bid-document-request selecting the desired bid documents from the drop down list and completing the requested information. All requests must include; **mailing address, email address, contact name, phone number**. Bids are due by 4:30 pm CT on March 06, 2018 and will be opened at 9:00 am CT on March 07, 2018. IFB Documents will be available until March 02, 2018.

Direct questions regarding this IFB to: Joseph Morgan eziqc@njpacoop.org or (218) 895-4141.

BOOK 1

Project Information, Instructions to Bidders, and Execution Documents

SOLICITATION NO.

CA03NCVAA-030618, CA03NCVAB-030618, CA03NCVBA-030618, CA03NCVBB-030618, CA03NCVCMA-030618, CA03NCVCMB-030618, CA04BAAA-030618, CA04BAAB-030618, CA04BABA-030618, CA04BABB-030618, CA04BACMA-030618, CA04BACMB-030618, CA05CVAA-030618, CA05CVAB-030618, CA05CVBA-030618, CA05CVBB-030618, CA05CVCMA-030618, CA05CVCMB-030618, CA07CCAA-030618, CA07CCAB-030618, CA07CCBA-030618, CA07CCBB-030618, CA07CCCMA-030618, CA07CCCMB-030618, CA08SLAA-030618, CA08SLAB-030618, CA08SLBA-030618, CA08SLBB-030618, CA08SLBC-030618, CA08SLBD-030618, CA08SLBE-030618, CA08SLBF-030618, CA08SLCEA-030618, CA08SLCEB-030618, CA08SLCMA-030618, CA08SLCMB-030618, CA08SLCRA-030618, CA08SLCRB-030618, CA09SIAA-030618, CA09SIAB-030618, CA09SIBA-030618, CA09SIBB-030618, CA09SIBC-030618, CA09SIBD-030618, CA09SIBE-030618, CA09SIBF-030618, CA09SICMA-030618, CA09SICMB-030618, CA09SICPA-030618, CA09SICRA-030618, CA09SICRB-030618

INDEFINITE QUANTITY CONSTRUCTION CONTRACT



202 12th Street NE
Staples, MN 56479

Joseph Morgan
eziQC Lead Contract Administrator
eziqc@njpacoop.org

January 2018

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BOOK 1

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SECTION ONE - PROJECT INFORMATION

1. DEFINITIONS

- 1.1 National Joint Powers Alliance® (NJPA):** NJPA is a public agency serving as a national municipal contracting agency established under the Minnesota Legislative Statute §123A.21 with the authority to develop and offer, among other services, cooperative purchasing services to its membership. Eligible membership and participation includes states, cities, counties, all government agencies, both public and non-public educational agencies, colleges, universities and non-profit organizations.
- 1.2 Joint Exercise of Powers:** NJPA cooperatively shares those contracts with its Members nationwide through various “Joint Exercise of Powers Laws” established in Minnesota and applicable laws in other states. The Minnesota “Joint Exercise of Powers Law” is Minnesota Statute §471.59 which states “Two or more governmental units...may jointly or cooperatively exercise any power common to the contracting parties...” Similar Joint Exercise of Powers Laws exists within the laws of each State of the United States. This Minnesota Statute allows NJPA to serve Member agencies located in all other states. Municipal agencies nationally have the ability to participate in cooperative purchasing activities as a result of specific laws of their own state. These laws can be found on our website at <https://www.njpacoop.org/cooperative-purchasing/state-legal-references>.
- 1.3 NJPA Members:**
- 1.3.1 Potential NJPA Members:** A Potential NJPA Member is defined as any public or private educational agencies including colleges and universities, districts or school boards, and any governmental unit including a city, county, town, political subdivision of Minnesota or another state, and any agency of the State of Minnesota or the United States, any instrumentality of a governmental unit, and any non-profit. Membership in NJPA is required to participate in any NJPA Contract. Any current or potential Member of NJPA who is in compliance with the terms and conditions of membership, shall have the option and freedom to access any of the procurement contracts of NJPA.
- 1.3.2 NJPA Member:** An NJPA Member is defined as any “Potential NJPA Member” who has completed and submitted a membership form or acknowledgement.
- 1.4 Purchase Order:** Purchase Orders for construction and services may be executed between NJPA or NJPA Members and the Contractor pursuant to this Invitation to Bid and the resulting Agreement.
- 1.4.1 Governing Law:** Purchase Orders, as identified above, shall be construed in accordance with, and governed by, the laws of a competent jurisdiction with respect to the NJPA Member. Each and every provision of law and clause required by law to be included in the Purchase Order shall be read and enforced as though it were included. If through mistake or otherwise any such provision is not included, or is not currently included, then upon application of either part the Agreement shall be physically amended to make such inclusion or correction. The venue for any litigation arising out of disputes related to Purchase Order(s) shall be a court of competent jurisdiction to the Purchaser.

- 1.4.2 Additional Terms and Conditions:** Additional terms and conditions to a Purchase Order may be proposed by NJPA, NJPA Members, or Contractors. Acceptance of these additional terms and conditions is OPTIONAL to all parties to the Purchase Order. The purpose of these additional terms and conditions is to, among other things, formerly introduce job or industry specific requirements of law such as prevailing wage legislation. Additional terms and conditions can include specific policy requirements and standard business practices of the issuing NJPA Member.
- 1.5 Adjustment Factors:** Adjustment Factors are the Contractor's competitively bid price adjustments to the Unit Prices as published in the Construction Task Catalog, Book 3. Adjustment Factors are expressed as an increase or decrease from the published Unit Prices.
- 1.6 Construction Task Catalog (CTC):** A comprehensive listing of specific construction related Tasks, together with a specific unit of measurement and a Unit Price.
- 1.7 Agreement:** the written Agreement between the Contractor and NJPA covering the Work to be performed; and other Contract Documents incorporated in or referenced in the Agreement and made part thereof as if provided therein.
- 2. ABOUT THE NATIONAL JOINT POWERS ALLIANCE® (NJPA)**
- 2.1** The National Joint Powers Alliance® (NJPA) is a public agency serving as a national municipal contracting agency established under the Minnesota Legislative Statute §123A.21 with the authority to develop and offer, among other services, cooperative purchasing services to its membership. Eligible membership and participation includes states, cities, counties, all government agencies, both public and non-public educational agencies, colleges, universities and non-profit organizations
- 2.2** Under the authority of Minnesota state laws and enabling legislation, NJPA facilitates a competitive bidding and contracting process on behalf of the needs of itself and the needs of current and potential member agencies locally and nationally. This process results in national procurement contracts with various Vendors of products/equipment and services which NJPA Member agencies desire to procure. These procurement contracts are created in compliance with applicable Minnesota Municipal Contracting Laws. A complete listing of NJPA cooperative procurement contracts can be found at <http://www.njpacoop.org/national-cooperative-contract-solutions>.
- 2.3** NJPA is a public agency governed by publicly elected officials that serve as the NJPA Board of Directors. NJPA's Board of Directors call for all proposals, awards all Contracts, and hosts those resulting Contracts for the benefit of its own and its Members use.
- 2.3.1 Subject to Approval of the NJPA Board:** NJPA contracts are awarded by the action of the NJPA Board of Directors. This action is based on the open and competitive bidding process facilitated by NJPA. The evaluation and resulting recommendation is presented to the Board of Directors by the NJPA Bid Review Committee.

2.4 NJPA currently serves over 50,000 member agencies nationally. Both membership and utilization of NJPA contracts continue to expand, due in part to the increasing acceptance of Cooperative Purchasing throughout the government and education communities nationally.

3. DEFINED GOALS OF THE IFB

3.1 The goal of this IFB is to establish a group of indefinite quantity construction contracts (IQCC) that NJPA and NJPA Members may access to complete repair, maintenance and minor new construction Projects at competitively bid prices. The Contractors will perform an ongoing series of individual Projects for NJPA Members at different locations primarily within the designated Geographic Area.

3.2 One of the major benefits to a Bidder is that one response may be prepared to receive a single award that is potentially available to and accessible by many potential buyers from government agencies, education, and non-profit agencies throughout the Geographic Area. The procurement activities of the NJPA Bid Review Committee is limited to document preparation, answering Bidder questions, advertising the solicitation, distribution of this IFB upon request, conducting an evaluation and making recommendation for possible approval to NJPA Board of Directors. Contracts awarded through NJPA are intended to meet the procurement laws of all states and NJPA will exhaust all avenues to comply with as many state laws as possible. It is the responsibility of each participating NJPA Member to ensure to their satisfaction that these laws are satisfied. An individual NJPA Member using these contracts is deemed by its own accord to be in compliance with bidding regulations. NJPA encourages the awarded Contractor to assist NJPA and the NJPA Member in this research to the benefit of all involved. After the award and contract phase, NJPA Members can issue Purchase Orders for any amount without the necessity to prepare their own IFB, or gathering of necessary quotations. This saves the NJPA Members countless hours of time and allows for more economical and efficient purchasing. State laws permit or encourage cooperative purchasing contracts with the belief that better prices and value will result.

4. IQCC OVERVIEW

4.1 IQCC is a competitively bid indefinite quantity construction contract awarded to Contractors to accomplish the repair, alteration, modernization, rehabilitation, and minor new construction of infrastructure, buildings, structures, or other real property. The Estimated Annual Value is based on the anticipated estimated annual use and the Agreement term is one year with bilateral option terms. The IFB Documents include a Construction Task Catalog (CTC) containing repair and construction Tasks with preset Unit Prices. All Unit Prices are based on local labor, material and equipment prices for the direct cost of construction. Once the Agreement is awarded, NJPA Members will order Work from the CTC by issuing a Purchase Order against the Agreement.

4.2 Bidders will offer price adjustments (Adjustment Factors) to be applied to the CTC Unit Prices. The Adjustment Factors represent either an increase to (such as 1.1000) or a decrease from (such as 0.9800) the preset Unit Prices. The amount to be paid for the Work ordered will be determined by: multiplying the preset Unit Prices by the appropriate quantities and by the appropriate Adjustment Factor. The CTC and the Contractor's Adjustment Factors will be incorporated into the awarded Agreement.

- 4.3** Under IQCC, the Contractor furnishes management, labor, materials, equipment and incidental design support needed to perform the Work.
- 4.4** As Projects are identified, the Contractor will jointly scope the Work with the NJPA Member. The NJPA Member will prepare a Detailed Scope of Work and issue a Request for Proposal to the Contractor. The Contractor will then prepare a Proposal Package for the Project including a Price Proposal, Schedule, list of identified subcontractors, and other requested documentation such as cut sheets for materials. If the Proposal Package is found to be reasonable, the NJPA Member will issue a Purchase Order. The Purchase Order will reference the Detailed Scope of Work and set forth the Purchase Order Completion Time, and the Purchase Order Price. The Contractor shall perform the Detailed Scope of Work within the Purchase Order Completion Time for the Purchase Order Price. Extra Work, credits, and deletions will be contained in Supplemental Purchase Orders calculated in the same manner.
- 4.5** NJPA through a formal selection process awarded a professional service agreement to The Gordian Group (Gordian) for their IQCC program. The system includes Gordian's proprietary eIQCC, eGordian and Bid Safe IQCC applications (IQCC Applications) and construction cost data (Construction Task Catalog), which shall be used by the Contractor to prepare and submit Price Proposals, subcontractor lists, and other requirements specified by NJPA and NJPA Members. The Contractor's use, in whole or in part, of Gordian's IQCC Applications and Construction Task Catalog and other proprietary materials provided by Gordian for any purpose other than to execute work under this Agreement for NJPA and NJPA Members is strictly prohibited unless otherwise stated in writing by Gordian. The Contractor hereby agrees to abide by the terms of the following Gordian IQCC System License:

IQCC System License

Gordian hereby grants to the Contractor, and the Contractor hereby accepts from Gordian for the term of this Agreement or Gordian's contract with NJPA, whichever is shorter, a non-exclusive right, privilege, and license to Gordian's proprietary IQCC System and related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing Contractor's responsibilities to NJPA and NJPA Members under this Agreement ("Limited Purpose"). The Contractor hereby agrees that Proprietary Information shall include, but is not limited to, Gordian's IQCC Applications and support documentation, Construction Task Catalog, training materials, marketing materials and any other proprietary materials provided to Contractor by Gordian. In the event this Agreement expires or terminates as provided herein, or the Gordian's contract with NJPA expires or terminates, this IQCC System License shall terminate and the Contractor shall return all Proprietary Information in its possession to Gordian.

Contractor acknowledges that Gordian shall retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights and trade secrets. Contractor shall have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor shall not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use or

sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.

Contractor acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Agreement, and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to Contractor, subject to federal, state and local laws related to public disclosure. Contractor further acknowledges that a breach of any of the terms of this Agreement by Contractor will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian shall be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity. In the event that it becomes necessary for either party to this IQCC System License to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, whether by litigation, arbitration or other proceedings, the prevailing party shall be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

In the event of a conflict in terms and conditions between this IQCC System License and any other terms and conditions of this Agreement or any Order, Purchase Order or similar purchasing document (Purchase Order) issued by NJPA or an NJPA Member, this IQCC System License shall take precedence.

- 4.6** The NJPA Member (or the NJPA Member Designated Representative), with the assistance of Gordian, will identify Projects and develop a draft scope of the work. The Contractor and Gordian will then assist the NJPA Member in developing a final scope of work. The NJPA Member will then issue a Detailed Scope of Work and a Request for Proposal to the Contractor. The Contractor will then utilize Gordian's IQCC System to prepare a Price Proposal for the Purchase Order including a Schedule, list of identified subcontractors, and other requested documentation such as cut sheets for materials. Gordian will assist the NJPA Member with Price Proposal review, and if the Price Proposal is found to be reasonable, the NJPA Member will issue a Purchase Order to Contractor. The Purchase Order will reference the Detailed Scope of Work and set forth the Purchase Order Completion Time, and the Purchase Order Price. The Contractor shall perform the Detailed Scope of Work within the Purchase Order Completion Time for the Purchase Order Price. Extra Work, credits, and deletions will be contained in Supplemental Purchase Orders calculated in the same manner.
- 4.7** The Contractor shall, within two (2) business days of receipt of a Purchase Order from an NJPA Member, provide notification to NJPA of each Purchase Order by forwarding a copy of the Purchase Order via email to PO@ezIQC.com or via facsimile to (864) 233-9100.
- 4.8** The Contractor shall, within two (2) business days of sending an Invoice to an NJPA Member, provide notification to NJPA of each Invoice by forwarding a copy of the Invoice via email to Invoice@ezIQC.com or via facsimile to (864) 233-9100.

5. GEOGRAPHIC AREAS

NJPA solicits bids for separate Agreements for each of the various Geographic Areas as

shown on Exhibit A. This solicitation is for the Geographic Areas as specified in the Invitation To Bid.

6. THE IFB DOCUMENTS

The IFB Documents consist of four Books:

- Book 1: Project Information, Instructions to Bidders and Execution Documents
- Book 2: IQCC Standard Terms and Conditions; General Terms and Conditions
- Book 3: Construction Task Catalog
- Book 4: Technical Specifications

7. QUALIFICATION OF BIDDERS

- 7.1** Bids shall be considered only from firms normally engaged in performing the type of work specified within the IFB Documents. Bidder must have adequate organization, facilities, equipment, and personnel to ensure prompt and efficient service to an NJPA Member (as solely determined by NJPA).
- 7.2** In determining a Bidder's responsibility and ability to perform the Agreement, NJPA has the right to investigate and request information concerning the financial condition, experience record, personnel, equipment, facilities, principal business location and organization of the Bidder, the Bidder's record with environmental regulations, and the claims/litigation history of the Bidder.
- 7.3** Bidder must possess documentation evidencing compliance with applicable licensing requirements.
- 7.4** Bidder must have a fully functioning office within the Geographic Area for which a bid is submitted.

8. AWARD

- 8.1** An Award of Contract will be made by the NJPA Board of Directors based on the recommendation of the NJPA Bid Review Committee on behalf of its current and future NJPA Members.
- 8.2** It is the intent of NJPA to award each Agreement to the lowest, responsive, responsible Bidder(s) based on the Combined Adjustment Factor as shown on Bid Form 1, provided however, no Bidder will be awarded more than one Agreement. In the event a Bidder submits the lowest bid on more than one Solicitation, NJPA will determine which Agreement will be awarded to which Bidder based on the combination of bids resulting in the lowest overall cost to the NJPA Members. NJPA shall have the right to waive any informality or irregularity in any Bidder's Response received and to accept the Bidder's Response(s), which in its judgment, is (are) in the best interests of NJPA and NJPA Members. NJPA reserves the right to reject all Bid Responses and advertise again if, in NJPA's opinion, the received bids do not meet or exceed the minimum needs and expectations of the NJPA current and qualifying members. NJPA reserves the right to award additional Agreements from this solicitation for a period of 180 Days (or longer, if mutually agreeable to both the Bidder and NJPA).
- 8.3** Additionally, the Bidder is required to submit a Management Plan, see Article 9, Section Two Instructions to Bidders. The Bidder's Management Plan will provide the NJPA information to gauge the responsibility of the Bidder.
- 8.4** A Bidder will not be awarded more than one same scope Agreement within any Geographic Area.

- 8.5** Competitive Range Determination - if a wide margin is found in the Adjustment Factors submitted in response to the solicitation; being too high or too low, then the NJPA Bid Review Committee may establish a Competitive Range for the solicitation. If it is determined that a Bidder's Combined Adjustment Factor is too far outside the Competitive Range then the Bidder can be removed from consideration. The Bidder shall be notified that they were determined to be outside the Competitive Range after award of the contracts.
- 8.6** Unbalancing of Bids – A Bid may be removed from consideration if it is determined that the Bidder has mathematically unbalanced their Bid to gain a competitive advantage. The Bid will be considered to be unbalanced if any Adjustment Factor is found to not cover the contractor's reasonable actual cost. Those costs would include a reasonable prorated share of their anticipated profit, overhead cost, and other indirect costs that the bidder anticipates for the performance of the work as determined by the NJPA Bid Review Committee.
- 8.7 The Other Than Normal Working Hours Adjustment Factors must be higher than the Normal Working Hours Adjustment Factors.**

9. ASSIGNMENT OF WORK

Each Project will be assigned to one of the appropriate Contractors based on the location of the Project. NJPA will make an effort to divide the work evenly among the Contractors in a Geographic Area. If the assigned Contractor is unable, or unwilling, to perform the Project timely, NJPA may ask the other Contractor in that Geographic Area to perform the Project. The other Contractor must accept the Project. If both Contractors in the Geographic Area are unable to perform the Project, then NJPA may ask one of the Contractors in the other Geographic Area to perform the Project, which Contractor may agree, or disagree, to perform the Project. If the Contractor agrees to perform the Project, it will do so using its competitively bid Adjustment Factors.

10. ORDER OF PRECEDENCE OF THE COMPONENTS OF THE CONTRACT DOCUMENTS

The order of precedence of the Contract Documents shall be as follows:

- Purchase Order which may include Plans, Drawings and supplemental Technical Specifications
- Standard Specifications of the NJPA Member, the City, State or Federal Government, if any
- Agreement
- Addenda, if any
- Book 2 – IQCC Standard Terms and Conditions
- Book 2 – General Terms and Conditions
- Book 3 – Construction Task Catalog
- Book 4 – Technical Specifications
- Book 1 – Project Information, Instructions, and Execution Documents

SECTION TWO - INSTRUCTIONS TO BIDDERS

1. GENERAL INFORMATION

- 1.1 The following instructions are given for the purpose of guiding Bidders in properly preparing their bids. Such instructions are part of the IFB Documents, and strict compliance is required with all the provisions contained in the instructions.
- 1.2 Examination of IFB Documents
- 1.2.1 It is the responsibility of each Bidder before submitting a Bid, to:
- 1.2.1.1 Examine the IFB Documents thoroughly,
 - 1.2.1.2 Take into account federal, State and local laws, regulations, ordinances, and applicable procurement codes that may affect costs, progress, performance, and furnishing of the Work, or award,
 - 1.2.1.3 Study and carefully correlate Bidder's observations with the IFB Documents, and
 - 1.2.1.4 Carefully review the IFB Documents and notify NJPA of all conflicts, errors or discrepancies in the IFB Documents of which Bidder knows or reasonably should have known.
- 1.3 The submission of a Bid shall constitute an incontrovertible representation by Bidder that Bidder has complied with the above requirements and that without exception, the Bid is premised upon performing and furnishing the Work required by the IFB Documents and that the IFB Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

2. SOLICITATION OF IFB

Sealed and properly identified bids entitled “**INDEFINITE QUANTITY CONSTRUCTION CONTRACT**” will be received by Joseph Morgan, eziQC Contract Manager, at NJPA Offices, 202 12th Street NE, Staples, MN 56479 until the deadline for receipt of, and opening of bids as specified in the Invitation for Bid. **Bids will be for the provision of Indefinite Quantity Construction Contract services for both NJPA and NJPA Members, and all government and education agencies to include colleges and universities.** A Representative from the NJPA Bid Review Committee will then read the Bidder's names aloud. A summary of the responses to this IFB will be made available for public inspection in the NJPA office in Staples, MN. The Award and resulting Agreement may be awarded within the timeframe identified in this IFB. To receive a complete copy of these IFB Documents, send or communicate all requests to the attention of Joseph Morgan 202 12th Street NE Staples, MN 56479 or visit our website at <http://www.njpacoop.org/national-cooperative-contract-solutions/eziqc-construction/eziqc-bid-document-request/>, select the desired bid documents from the drop down list and complete the requested information. All requests must include mailing address, email address, contact name, and phone number. IFB CD's will be EXPRESS mailed to the address provided. Oral, facsimile, telephone or telegraphic Bid Submissions or requests for IFB Documents are invalid and will not receive consideration. Direct questions regarding this IFB to Joseph Morgan at eziqc@njpacoop.org or 218-895-4141.

3. ADVERTISING OF SOLICITATION

3.1 AS A POLICY, NJPA SHALL ADVERTISE THIS SOLICITATION IT SHALL BE POSTED ON NJPA'S WEBSITE, POSTED TO THE WEBSITE OF NOTICETOBIDDERS.COM, AND POSTED TO OTHER THIRD PARTY WEBSITES DEEMED APPROPRIATE BY NJPA. THIS ADVERTISEMENT IS ALSO SUBMITTED FOR POSTING AT INDIVIDUAL STATE LEVELS. NJPA WILL NOT MAINTAIN OR COMMUNICATE TO A BIDDER'S LIST. ALL INTERESTED BIDDERS MUST RESPOND TO THE SOLICITATION AS A RESULT OF AN INTERNET WEB NOTICE OR HARD COPY RESEARCH OF SAID PUBLICATION. BECAUSE OF THE SCOPE OF THE POTENTIAL MEMBERS AND NATIONAL VENDORS, NJPA HAS DETERMINED THAT THIS IS THE BEST WAY TO FAIRLY SOLICIT OUR IFB REQUESTS.

3.2 IN ADDITION, NJPA SHALL ADVERTISE IN ONE OR MORE PUBLICATIONS DISTRIBUTED IN THE GEOGRAPHIC AREA, INCLUDING, BUT NOT LIMITED TO, NEWSPAPERS AND OTHER PUBLICATIONS CONSISTENT WITH STATE LAW REGARDING NOTICE OF THIS INVITATION TO BID.

4. REQUEST FOR INFORMATION (RFI)

4.1 Submit all RFIs about this IFB, in writing, to Joseph Morgan, NJPA, 202 12th Street NE, Staples, MN 56479, or by email at eziqc@njpacoop.org prior to **February 28, 2018 at 12:00 PM CT**. NJPA urges potential bidders to communicate all concerns during the response period to avoid misunderstandings.

4.2 If an RFI is deemed by NJPA to have a material impact on the IFB, the response to the RFI will become an Addendum to these IFB Documents.

4.3 If the RFI and response is deemed by NJPA to be a clarification of existing terms and conditions and does not have a material impact on the IFB, no further documentation of that RFI is required.

5. PRE-BID SEMINAR

A Pre-bid seminar and/or webinar will be held at the places and times listed in the Invitation for Bid for the purpose of discussing the IQCC procurement system, the IFB Documents and bid forms. Attendance at one of the Pre-Bid Seminar(s)/Webinar(s) is mandatory to be deemed responsive.

6. ADDENDA TO THE IFB DOCUMENTS

Addenda are written instruments issued by the NJPA that modify or interpret these IFB Documents. All Addenda issued by NJPA shall become a part of the IFB Documents. Addenda will be delivered to all potential bidders using the same method of delivery of the original IFB material or by email if appropriate. NJPA accepts no liability in connection with the delivery of said materials. Copies of Addenda will also be made available on the eziQC website at <http://eziqc.egordian.com/Prebid/Default> or the NJPA website from www.NJPACOOOP.org/national-cooperative-contract-solutions/eziqc-construction/eziqc-pending-solicitations and from the NJPA offices. No Addenda will be issued later than five (5) Days prior to the deadline for receipt of bids, except an Addendum withdrawing the request for bids or one that includes postponement of the date of receipt of bids. Each potential bidder shall ascertain prior to submitting a bid that it has received all Addenda issued, and the bidder shall acknowledge its receipt in its bid response.

7. BID DEPOSIT

- 7.1** Bid deposit shall be a bond provided by a surety company or the equivalent in a cashier's check, money order or certified check. All certified checks must be drawn on a bank doing business in the United States, and shall be made payable to the order of NJPA. **CASH IS NOT AN ACCEPTABLE FORM OF BID DEPOSIT.**
- 7.2** Bid deposits shall be in the amount shown in the IFB. After bids are opened, deposits shall be irrevocable for the period of one hundred and twenty (120) days. If a bidder is permitted to withdraw its bid before award, no action shall be taken against the bidder or the bid deposit.
- 7.3** The bid bonds, certified checks, or cashiers checks of unsuccessful bidders will be returned as soon as practicable after the opening of the bids; however, the deposits of the three lowest bidders shall be retained until NJPA awards the Agreement or for any reason rejects all bids

8. BID SUBMISSION PROCESS

8.1 Preparation of the Bid Response

8.1.1 Bid package will be submitted as follows:

8.1.1.1 **One (1) original copy of Bid Forms 1, 2, 10 and 14 MUST** be submitted **for each Contract Opportunity** that you are bidding. These bid forms **MUST** be in separate **SEALED Envelopes**. On the outside of each envelope you will include Company Name, Solicitation Number, and Geographic Area.

8.1.1.2 **Bid forms 3, 4, 5, 6, 7, 8, 9, 11, 12, and 13** – only need to be submitted once for the **entire package**. As stated below you will provide One (1) Original copy of Bid Forms 3, 4, 5, 6, 7, 8, 9, 11, 12, and 13 in a Tabbed Notebook. On the outside of the Notebook you will include Company Name, Solicitation Number, and Geographic Area.

8.1.2 Additionally, submit one (1) electronic copy (CD-ROM's or USB Flash Drives) of the bid documents (Bid Forms 1-14) and scanned copies of signature pages with original signatures. The CD's or USB Flash Drive must be labeled with; Solicitation No., Date, and Company Name.

8.1.3 All bids shall be on the forms provided. Telegraphic, electronic mail or fax machine bids cannot be considered.

8.1.4 The bid documents must be submitted with original ink signatures by the person authorized to sign the bid. The person signing the bid must initial erasures, interlineations or other modifications in the bid document. Failure to properly sign the bid documents or to make other notations as indicated may result in rejection of the bid and cause the bid to be deemed non-responsive.

8.1.5 Mistakes may be corrected prior to bid opening, but shall be initialed by the person signing the bid documents. Corrections and/or modifications received after the opening time will not be accepted, except as authorized by applicable rule, regulation or statute and NJPA.

- 8.1.6** It is the responsibility of all Bidders to examine the entire IFB package, to seek clarification of any item or requirement that may not be clear and to check all responses for accuracy before submitting a bid. Negligence in preparing a bid confers no right of withdrawal after the deadline for submission of bids.

9. CONTRACTOR'S MANAGEMENT PLAN

- 9.1** The Bidder is required to submit its plan for management of the contract. The title of the submittal shall be "**MANAGEMENT PLAN FOR EXECUTION OF IQCC.**" The Contractor's Management Plan **must be** submitted as part of the Bidder's bid documents.
- 9.2** In addition to the bid documents and other required submittals, the Contractor's Management Plan **will be used** by the NJPA to determine the responsibility of the Bidder to perform the contract. Therefore the Bidder should take great care in the preparation of the Management Plan.
- 9.3** The Bidder may be determined non-responsive for failure to submit the Management Plan and/or declared non-responsible for failure to adequately address the issues below to the satisfaction of the NJPA.
- 9.4** The Management Plan shall include as a minimum the following information and organized specifically as shown below:
- 1.** State the number of years your company has been in the construction industry, the type of work your company self-performs, and the type of work your company typically subcontracts.
 - 2.** List the five (5) largest construction contracts your firm has been awarded in the last five (5) years that were/are similar to the Work on which you are bidding. **Submit Bid Form 12 for each contract.**
 - a. Contract title.*
 - b. Contract number.*
 - c. Geographic location.*
 - d. Owner name and contact (title, address, email and phone number).*
 - e. Contract amount.*
 - f. Contract duration, start and finish dates.*
 - g. Actual Contract duration, start and finish dates.*
 - i. Identify the approximate dollar amount of Work completed.*
 - h. Provide a general description of the Scope of Work.*

The awarded Contractor must have the capacity and capability to perform multiple projects at multiple locations simultaneously. Demonstrate this capacity and capability by providing ten (10) projects that meet the following information for each project between \$25,000 to \$500,000 completed in the last three (3) years: **Submit Bid Form 13 for each Project.**

- a. Project title.*
- b. Project number.*
- c. Geographic location.*
- d. Owner name and contact (title, address, email and phone number).*
- e. Project amount.*

- f. Project duration, start and finish dates.
 - g. Actual Project duration, start and finish dates.
 - h. Project size in \$.
 - i. Provide a brief description of the Scope of Work.
3. Provide a narrative description of how you propose to execute the Work assigned under this contract, including but not limited to:
- a. Your general understanding of the IQCC procurement system including your assessment of any of the articles of the General Conditions you deem critical to the operations and management of the contract.
 - b. The Contractor is expected to participate in the development and documentation of the Detail Scope of Work for each Purchase Order. Explain in detail your proposed participation and the specific qualities of your personnel that will add benefit to this process.
 - c. Provide your approach to the expeditious close out of Projects, correction of unacceptable Work, and punch list procedures.
 - d. The Contractor is expected to assist NJPA in the marketing of the IQCC services under the ezIQC brand. **Please provide a specific sales and marketing plan including your strategy for sales and marketing, the personnel and their qualifications for sales and marketing, and the frequency and duration of the efforts. Additionally, the Contractor is expected to market to potential NJPA members. Please describe your plan to accomplish this.**
 - e. **If you held a previous ezIQC Contract please describe how you marketed and sold the contract and list your accomplishments. Failure to provide this information may be grounds for disqualification.**
 - f. All Work has a minimum warranty period of one (1) year. Please describe your process for tracking and performing warranty work.
 - g. If within the past five (5) years, the Bidder has been lawfully precluded from participating in any public procurement activity with a federal, state or local government, then the Bidder must provide a letter with its response setting forth the name and address of the public procurement unit, the effective date of the suspension or debarment, the duration of the suspension or debarment and the relevant circumstances relating to the suspension or debarment. If applicable the Bidder should describe steps taken to improve and ensure these issues do not continue to be a burden. If the Bidder has held an NJPA ezIQC Contract and has requested that the contract be terminated, then the Bidder must provide the reason for the request. Please describe on a separate document and if applicable describe steps taken to improve and ensure these issues do not continue to be a burden. Failure to provide this information may be grounds for disqualification.
4. Management Team
- a. Provide an organizational chart.
 - b. Describe the responsibilities and duties of each position by indicating who will manage the overall contract, attend Joint Scope Meetings, prepare Proposal Packages, negotiate with Subcontractors, supervise construction,

and perform administration tasks.

- c. Provide resumes for your **key** personnel you intend to assign to this contract.
- d. Provide a current list of the number and classification of your full time employees.

10. BID PRICING

- 10.1** Each Bidder must submit Five (5) Adjustment Factors to be applied to every task in the CTC. The bid shall be an adjustment “decrease from” (e.g. 0.9800) or “increase to” (e.g. 1.1000 the Unit Prices listed in the CTC. **Bidders who submit separate Adjustment Factors for separate line items will be considered non-responsive and their bids will be rejected.**
- 10.2** The Bidder's Adjustment Factors shall include all of the Bidder's direct and indirect costs including, but not limited to, its costs for overhead, profit, bond premiums above the reimbursable amount, insurance, mobilization, Purchase Order Proposal development, and all contingencies in connection therewith. See pages 00-1 – 00-6 of Book 3 – the CTC for a complete explanation of what is included in the Unit Prices and what is not.
- 10.3** The first Adjustment Factor is to be applied to Work to be accomplished during Normal Working Hours and performed on Projects that require prevailing wage rates.
- 10.4** The second Adjustment Factor is to be applied to Work to be accomplished during Other Than Normal Working Hours on Projects that require prevailing wage rates.
- 10.5** The third Adjustment Factor is to be applied to Work to be accomplished during Normal Working Hours and performed on Projects that do not require prevailing wage rates.
- 10.6** The fourth Adjustment Factor is to be applied to Work to be accomplished during Other Than Normal Working Hours and performed on Projects that do not require prevailing wage rates.
- 10.7** The fifth Adjustment Factor is for work tasks not identified in the Construction Task Catalog. IQCC includes a provision for establishing of prices for Work requirements which are within the general scope of IQCC but were not included in the CTC at the time of Contract award, see Book 2 Section One, Article 10. These Tasks are referred to as "Non Pre-priced Tasks (NPP)". NPP Tasks may require new specifications and drawings and may subsequently be incorporated into the CTC. The bidders will offer an Adjustment Factor to be applied to the actual material, equipment, and labor cost for NPP work Tasks. **The NPP Adjustment Factor shall not be less than 1.0500 and not higher than 1.2000, excluding Administrative Fees.**
- 10.8** Adjustment Factors must be specified to the fourth decimal place. For example:

1	.	1	0	0	0
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Or

0	.	9	8	0	0
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10.9 For bid evaluation purposes only, the following weighting of the Adjustment factors shall be used to determine the Combined Adjustment Factor:

NORMAL WORKING HOURS- PREVAILING WAGE RATE PROJECTS	60%
OTHER THAN NORMAL WORKING HOURS- PREVAILING WAGE RATE PROJECTS	10%
NORMAL WORKING HOURS- NON-PREVAILING WAGE RATE PROJECTS	10%
OTHER THAN NORMAL WORKING HOURS- NON- PREVAILING WAGE RATE PROJECTS	10%
NON PRE-PRICED	10%

11. BID DOCUMENT CHECKLIST

The following documents must be submitted with the bid:

- Bid Form 1: The Adjustment Factors
- Bid Form 2: Calculation of the Combined Adjustment Factor
- Bid Form 3: Bid Deposit
- Bid Form 4: Bidder Assurance of Compliance
- Bid Form 5: Management Plan
- Bid Form 6: Certificate of Good Standing¹
- Bid Form 7: Certificate of Secretary²
- Bid Form 8: Bonding Company Statement of Bond Capacity and Availability³
- Bid Form 9: Financial Statement⁴
 1. Provide a Certificate of Good Standing for your business from the state in which you are organized.
 2. Provide a certificate of Secretary for your business identifying an authorized signer for the Agreement.
 3. Provide a letter from your bonding company setting forth your company's available bonding capacity and availability and confirming that, if required, your company could provide labor and material payment bonds and performance bonds for certain projects up to the bonding capacity.
 4. Provide the most current financial statement for your company as prepared by a CPA.
- Bid Form 10: Form of Agreement (signed)
- Bid Form 11: Agreement to work in all Areas in the State (signed)
- Bid Form 12: IQC/JOC Contract Experience (5 Contracts)
- Bid Form 13: IQC/JOC Project Experience (10 Projects)
- Bid Form 14: Existing Full-Service Office Location Affidavit

12. BID TRANSMITTAL

12.1 It is the responsibility of the Bidder to be certain that the bid is in the physical possession of NJPA on or prior to the deadline for submission of bids.

12.2 Bids must be submitted in a sealed envelope or box properly addressed to NJPA and with the following information clearly marked on the outside of the envelope or box:

- Solicitation number
- Name of Solicitation
- Geographic Area
- Deadline for bid submission
- Bidder's name and address.

12.3 NJPA is not responsible for late receipt of bids. Bids received by the correct deadline for bid submission will be opened and the name of each Bidder and other appropriate information will be publicly read.

13. MODIFICATION OR WITHDRAWAL OF A SUBMITTED BID

A submitted bid may not be modified, withdrawn or cancelled by the Bidder for a period of one hundred and eight (180) Days following the time and date designated for the receipt of bids. Prior to the deadline for submission of bids, any bid submitted may be modified or withdrawn by notice to the NJPA Coordinator of Bids and Contracts. Such notice shall be submitted in writing and include the signature of the Bidder and shall be delivered to NJPA prior to the deadline for submission of bids and it shall be so worded as not to reveal the content of the original bid. However, the original bid shall not be physically returned to the Bidder until after the official bid opening. Withdrawn bids may be resubmitted up to the time designated for the receipt of the bids if they are then fully in conformance with the Instructions to Bidders.

14. BIDDER RESPONSIVENESS AND RESPONSIBILITY

14.1 In accordance with accepted standards of competitive sealed bid awards as set forth in the State's Procurement Code, competitive sealed bids/awards will be made to responsive and responsible Bidders whose bids are determined in writing to be the most advantageous to NJPA and its current or future NJPA Members. To qualify for evaluation, a bid must be responsive which means it shall have been submitted on time and materially satisfy all mandatory requirements identified in this document. A bid must reasonably and substantially conform to all the terms and conditions in the solicitation to be considered responsive. Deviations or exceptions stipulated in Bidder's response, while possibly necessary in the view of the Bidder, may result in disqualification. Language to the effect that the Bidder does not consider this solicitation to be part of a contractual obligation will result in that bid being disqualified by NJPA.

15. CERTIFICATION

By signing this bid, the Bidder certifies:

15.1 The submission of the offer did not involve collusion or any other anti-competitive practices;

15.2 The Bidder/Contractor shall not discriminate against any employee or applicant for

employment in violation of Federal and State Laws (see Federal Executive Order 11246);

15.3 The Bidder has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with the submitted offer (see Gratuities); and

15.4 The Bidder agrees to promote and offer to NJPA Members only those products and/or services as previously stated, allowed and deemed a resultant of the Agreement(s) as NJPA Contract items or services. This clause shall include any future product or service additions as allowed through contract additions.

16. PROTESTS

16.1 Protests shall be filed with the NJPA's Executive Director and shall be resolved in accordance with appropriate state statutes of Minnesota. Protests will only be accepted from Bidders. A protest must be in writing and filed with NJPA. A protest of an award or proposed award must be filed within ten (10) calendar days after the public notice or announcement of the award. No protest shall lie for a claim that the selected Bidder is not a responsible Bidder. A protest must include:

1. The name, address and telephone number of the protester;
2. The original signature of the protester or its representative (you must document the authority of the Representative);
3. Identification of the Solicitation by solicitation number;
4. Identification of the statute or procedure that is alleged to have been violated;
5. A precise statement of the relevant facts;
6. Identification of the issues to be resolved;
7. The aggrieved party's argument and supporting documentation;
8. The aggrieved party's statement of potential financial damages;
9. A protest bond in the name of NJPA and in the amount of 10% of the aggrieved party's statement of potential financial damages.

17. PUBLIC RECORD

All bids submitted to this invitation shall become the property of the NJPA and will become a matter of public record, available for review subsequent to the award notification. Bids may be viewed by appointment at the NJPA offices Monday through Friday from 8:30 a.m. to 3:30 p.m. CT.

18. PREVAILING WAGE RATES AND PARTICIPATION REQUIREMENTS

18.1 This clause is applicable to States in which prevailing wage rates are established by law. The Contractor shall pay prevailing wages to all workers in accordance with the applicable laws. The wage rates used for the CTC were the prevailing wage rates, if any; in effect at the time these IFB Documents were issued. In the performance of the Work, however, Contractor shall be fully responsible for paying the generally prevailing hourly rate of wages in effect, as determined by the State Department of Labor and/or Commerce, at the time the Work is performed. If the State Department of Labor and/or Commerce revises the prevailing rate of hourly wages to be paid for the Work prior to completion of the Project, the revised rate shall apply to this Agreement from the effective date of such revision, however such revision shall not entitle Contractor to any increased compensation under the terms of the Agreement.

18.2 If other wage rates are required by law, the Contractor shall pay such wages to all workers in accordance with the applicable laws. If the Purchase Order is performed in whole or in part using federal funding, then the Davis Bacon Wages for that area will apply.

18.3 Contractors shall meet any goals or requirements established by the NJPA Member ordering the Work, and/or satisfy the intent of said goals or requirements, with regard to Small, Local, Minority, Women, Veteran or Disadvantaged Business Enterprises. Additional participation goals may be incorporated into the Request for Proposal or Detailed Scope of Work.

19. MARKETING REQUIREMENT

Bidder must express a willingness and ability to take ownership and promote the services to be provided. Your sales force must agree to work in cooperation with NJPA to develop a marketing strategy and provide avenues to equally market and drive sales through the Agreement and program to all NJPA Members and Potential NJPA Members. Bidder agrees to actively market in cooperation with NJPA all available services to current NJPA Members, as well as Potential NJPA Members.

If you are awarded a contract based on this solicitation your sales force will be a primary driver of everyone's success. Your sales force needs to be aware that:

- The use of NJPA Contract will save their customer (NJPA's Member) the time and effort of bringing a new individual Invitations for Bid (IFB);
- The use of the NJPA Contract will save your sales force the time and effort of responding to individual Invitations for Bid (IFB);
- The use of the NJPA Contract will guaranty that NJPA Members have the ability to choose you.

An award of Contract resulting from this IFB is an opportunity for the awarded contactor to pursue commerce with, and deliver value to NJPA and NJPA Members. An award of Contract is not an opportunity to see how much business NJPA can drive to an awarded Contractor's door. **As such the Bidder will demonstrate in the Management Plan specific marketing strategies, personnel and the qualifications of those personnel to market IQCC and the frequency and duration of marketing efforts.** NJPA reserves the right to deem a Bidder non-responsive or to waive an award based on a Bidder's unwillingness to participate in such a marketing effort or by submitting an unsatisfactory marketing strategy as part of the overall management plan. Further marketing requirements will be found in Book Two Section 10 of this IFB.

20. MEMBER SIGN-UP PROCEDURE

Bidder agrees to cooperate and participate in the NJPA Membership process as part of connecting NJPA Members to NJPA contracts. The process to sign up new NJPA Members to purchase under this Agreement will be defined during the award phase.

21. FEES

21.1 The Contractor shall include the NJPA Administrative Fee in calculating the Contractor's Adjustment Factors.

21.2 The NJPA Administrative Fee will be calculated at the rate of 7.5% of the total Purchase Order Price charged to the NJPA Member.

21.3 The NJPA Administrative Fee shall be remitted by the Contractor to NJPA, or its

designated contract administrator, within thirty (30) days of the submission of an invoice to an NJPA Member by Contractor. The Contractor shall be assessed a one percent (1%) per month late fee for any Administrative Fees not paid by the due date set forth herein.

- 21.4** NJPA designates The Gordian Group, Inc., (Gordian) as their contract administrator. The NJPA Administrative Fee payments shall be made payable to The Gordian Group and sent to the following address:

The Gordian Group, Inc.
PO Box 79341
Baltimore, MD 21279-0341

- 21.5** NJPA or Gordian may request records from the Contractor for all purchases through this Agreement and payment of all Administrative Fees. If a discrepancy exists between the purchasing activity and the Administrative Fees paid, NJPA or Gordian will provide written notification to the Contractor of the discrepancy and allow the Contractor ten (10) days from the date of notification to resolve the discrepancy. In the event the Contractor does not resolve the discrepancy to the satisfaction of NJPA or Gordian, NJPA or Gordian reserve the right to engage a third party to conduct an independent audit of the Contractor's records and, in the event Contractor is not in compliance with this Contract, Contractor shall, in addition to any Administrative Fees due, reimburse the appropriate party for the cost and expense related to such audit.
- 21.6** NJPA and Contractor hereby acknowledge that The Gordian Group, Inc., as the designated contract administrator, is a third-party beneficiary of Section 20, including all subsections therein. In the event any court action is brought to enforce payment of the Administrative Fees set forth above by any party or third-party beneficiary of this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and collection costs.

22. TAXES

The Contractor shall pay all sales, consumer, use and other similar taxes required by Law for which an exemption does not exist. If the Contractor is required to pay sales tax on non-exempt material, equipment, services or other items purchased in connection with a Purchase Order, the Member will reimburse the Contractor for such tax, without mark-up, provided the Contractor submits the appropriate documentation therefor.

23. PHYSICAL PRESENCE

The Bidder must have a fully staffed and functioning office located within the Zone they are applying for and must have been in business performing construction work for at least **three (3) years**. Contractor to complete Bid Form 14: Existing Full-Service Office Location Affidavit for each zone that you are bidding.

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SECTION THREE - BID FORMS

BID FORM 1: THE ADJUSTMENT FACTORS

SOLICITATION NO: _____

CONTRACTOR NAME: _____

GEOGRAPHIC AREA: _____

The Contractor shall perform the Tasks and pay all Administrative Fees required by each individual Purchase Order issued pursuant to this using the following Adjustment Factors:

1. Normal Working Hours Prevailing Wage: 7:00am to 4:00pm Monday to Friday, except holidays. Contractor shall perform Tasks during Normal Working Hours for the Unit Price set forth in the CTC multiplied by the Adjustment Factor of:

1.A Adjustment Factor Without Administrative Fees:

	.				
--	---	--	--	--	--

(Specify to four decimal places)

1.B Adjustment Factor With Administrative Fees (1.A / 0.925):

	.				
--	---	--	--	--	--

(Specify to four decimal places)

2. Other Than Normal Working Hours Prevailing Wage: 4:00pm to 7:00am Monday to Friday, and any time Saturday, Sunday and Holidays. Contractor shall perform Tasks during Other Than Normal Working Hours for the Unit Price set forth in the CTC multiplied by the Adjustment Factor of:

2.A Adjustment Factor Without Administrative Fees:

	.				
--	---	--	--	--	--

(Specify to four decimal places)

2.B Adjustment Factor With Administrative Fees (2.A / 0.925):

	.				
--	---	--	--	--	--

(Specify to four decimal places)

3. Normal Working Hours Non-Prevailing Wage: 7:00am to 4:00pm Monday to Friday, except holidays. Contractor shall perform Tasks during Normal Working Hours for the Unit Price set forth in the CTC multiplied by the Adjustment Factor of:

3.A Adjustment Factor Without Administrative Fees:

	.				
--	---	--	--	--	--

(Specify to four decimal places)

3.B Adjustment Factor With Administrative Fees (3.A / 0.925):

	.				
--	---	--	--	--	--

(Specify to four decimal places)

4. Other Than Normal Working Hours Non-Prevailing Wage: 4:00pm to 7:00am Monday to Friday, and any time Saturday, Sunday and Holidays. Contractor shall perform Tasks during Other Than Normal Working Hours for the Unit Price set forth in the CTC multiplied by the Adjustment Factor of:

4.A Adjustment Factor Without Administrative Fees:

	.				
--	---	--	--	--	--

 (Specify to four decimal places)

4.B Adjustment Factor With Administrative Fees (4.A / 0.925):

	.				
--	---	--	--	--	--

 (Specify to four decimal places)

5. Non Pre-priced Adjustment Factor: To be applied to Work deemed not to be included in the CTC but within the general scope of the work:

5.A Adjustment Factor Without Administrative Fees:

	.				
--	---	--	--	--	--

 (Specify to four decimal places)

5.B Adjustment Factor With Administrative Fees (5.A / 0.925):

	.				
--	---	--	--	--	--

 (Specify to four decimal places)

6. Combined Adjustment Factor: (From Line 11 Bid Form 2)

	.				
--	---	--	--	--	--

(See Bid Form 2 for calculation procedure)

NOTICE - The attention of Bidders is particularly called to the fact that, unless the Bid is made in strict conformity with the directions given, it may be considered non-responsive and may be rejected. The Bidder must fill in all boxes and blanks.

Before submitting this bid, the Bidder is directed to the Construction Task Catalog to review the explanation of the costs included in the Unit Prices and in the Adjustment Factors. Except for a Non Pre-priced Task, the only compensation to be paid to a Contractor will be the total of the Unit Prices multiplied by the quantities multiplied by the Adjustment Factor. No additional payments of any kind whatsoever will be made. All costs not included in the Unit Prices must be part of the Adjustment Factors.

- **The Other Than Normal Working Hours Adjustment Factors must be higher than the Normal Working Hours Adjustment Factors.**
- **The Non Pre-priced Adjustment Factor Without Administrative Fees on Bid Form 1 must be between 1.0500 and 1.2000**

NJPA RESERVES THE RIGHT TO REVISE ALL ARITHMETIC ERRORS IN CALCULATIONS FOR CORRECTNESS.

BID FORM 2: CALCULATION OF THE COMBINED ADJUSTMENT FACTOR

SOLICITATION NO: _____

CONTRACTOR NAME: _____

GEOGRAPHICAL AREA: _____

The following formula has been developed for the sole purpose of evaluating bids and awarding.

Each Bidder must complete the following calculation.

Line 1. Normal Working Hours Prevailing Wage (1.B) _____

Line 2. Multiply Line 1 by .60 _____

Line 3. Other Than Normal Working Hours Prevailing Wage (2.B) _____

Line 4. Multiply Line 3 by .10 _____

Line 5. Normal Working Hours Non-Prevailing Wage (3.B) _____

Line 6. Multiply Line 5 by .10 _____

Line 7. Other Than Normal Working Hours Non-Prevailing Wage (4.B) _____

Line 8. Multiply Line 7 by .10 _____

Line 9: Adjustment Factor for Non Pre-priced Tasks (5.B) _____

Line 10: Multiply Line 9 by .10 _____

Line 11: Summation of lines 2, 4, 6, 8 and 10
(Combined Adjustment Factor) _____

Transfer the number on line 11 to the space provided for the Combined Adjustment Factor on Bid Form 1.

Instructions To Bidder: Specify lines 1 through 11 to four (4) decimal places. Use conventional rounding methodology (i.e., if the number in the 5th decimal place is 0-4, the number in the 4th decimal remains unchanged; if the number in the 5th decimal place is 5-9, the number in the 4th decimal is rounded upward).

Note To Bidder: The weights in lines 2, 4, 6, 8 and 10 above are for the purpose of calculating a Combined Adjustment Factor only. No assurances are made by NJPA that Work will be ordered under the Agreement in a distribution consistent with the weighted percentages above. The Combined Adjustment Factor is only used for the purpose of determining the lowest Bidder.

When submitting Price Proposals related to specific Purchase Orders, the Bidder shall utilize one or more of the Adjustment Factors applicable to the Work being performed provided in lines 1, 3, 5, 7 or 9 as applicable, on the Bid Form 2 above.

BID FORM 3: BID DEPOSIT

(Insert bid deposit here)

BID FORM 4: BIDDER ASSURANCE OF COMPLIANCE

AFFIDAVIT

The undersigned, representing the persons, firms and corporations joining in the submission of the foregoing bid (such persons, firms and corporations hereinafter being referred to as the “Bidder”), being duly sworn on his/her oath, states to the best of his/her belief and knowledge:

1. I am authorized to act on behalf of the Bidder, and
2. To the best of my knowledge, no Bidder or Potential Bidder, nor any person duly representing the same, has directly or indirectly entered into any agreement or arrangement with any other Bidders, Potential Bidders, any official or employee of NJPA, or any person, firm or corporation under contract with NJPA in an effort to influence either the offering or non-offering of certain prices, terms, and conditions relating to this IFB which tends to, or does, lessen or destroy free competition in the letting of the Agreement sought for by this IFB, and
3. Bidder, or any person on Bidder’s behalf, has not agreed, connived or colluded to produce a deceptive show of competition in the manner of the bidding or award of the referenced Agreement, and
4. Neither I, Bidder, nor, any officer, director, partner, member or associate of Bidder, nor any of its employees directly involved in obtaining contracts with NJPA or any subdivision of NJPA, has been convicted of false pretenses, attempted false pretenses or conspiracy to commit false pretenses, bribery, attempted bribery or conspiracy to bribe under the laws of any state or federal government for acts or omissions after January 1, 1985, and
5. Bidder has examined and understands all the terms and conditions contained in the IFB and it has no exceptions to such terms and conditions, and
6. If awarded a contract, Bidder will provide the services to qualifying NJPA Members in accordance with the terms and conditions of this IFB, and
7. Bidder has carefully checked the accuracy of all the information and prices provided in this bid, and
8. Bidder understands that NJPA reserves the right to reject any or all bids and that this bid may not be withdrawn during a period of 120 days from the time of the opening date, and
9. Bidder certifies that in performing this Agreement it will comply with all applicable provisions of the federal, State, and local laws, regulations, rules, and orders.
10. If applicable, Bidder confirms receipt and acknowledgement of the following addendums:

Addendum Number 1: _____
Addendum Number 2: _____
Addendum Number 3: _____

Signature

Company Name: _____

Contact Person for Questions: _____

Phone: _____

(Must be individual who is responsible for filling out this Bidder's Response form)

Mailing Address: _____

City/State/Zip: _____

Telephone Number: _____ Fax: Number: _____

E-mail Address: _____

Authorized Signature: _____

Print Name: _____

Title: _____

Date: _____

Notarized

Subscribed and sworn to before me this _____ day of _____,
20____

Notary Public in and for the County of _____

State of _____

My commission expires: _____

Signature: _____

BID FORM 5: MANAGEMENT PLAN

(Insert management plan here)

BID FORM 6: CERTIFICATE OF GOOD STANDING

Provide a Certificate of Good Standing for your business from the state in which you are organized.

(Insert certificate of good standing here)

BID FORM 7: CERTIFICATE OF SECRETARY

Provide a certificate of Secretary for your business identifying an authorized signer for the Agreement.

(Insert certificate of secretary here)

BID FORM 8: BONDING COMPANY STATEMENT

Provide a letter from your bonding company setting forth your company's available bonding capacity and availability and confirming that, if required, your company could provide labor and material payment bonds and performance bonds for certain projects up to the bonding capacity.

(Insert bonding company statement here)

BID FORM 9: FINANCIAL STATEMENT

(Insert financial statement here)

BID FORM 10: INDEFINITE QUANTITY CONSTRUCTION AGREEMENT

IMMEDIATELY FOLLOWS



INDEFINITE QUANTITY CONSTRUCTION AGREEMENT

IFB NUMBER: _____

GEOGRAPHIC AREA _____

This Agreement dated _____, by and between the National Joint Powers Alliance, hereinafter referred to as NJPA and _____ at the following address _____

hereinafter referred to as the CONTRACTOR.

WITNESSETH: NJPA and CONTRACTOR for the consideration hereafter agree as follows:

ARTICLE 1. CONTRACT DOCUMENTS

- A. Contract Documents: This Agreement; the IFB Documents; (Book 1 - Project Information, Instructions to Bidders and Execution Documents; Book 2 - IQCC Standard Terms and Conditions and General Conditions; Book 3 - Construction Task Catalog (CTC), Book 4 - Technical Specifications) and Addenda thereto, all payment and performance bonds (if any), material and workmanship bonds (if any); wage rate decisions and certified payroll records (if any); Notice of Award; all modifications issued thereto, including Supplemental Purchase Orders/Change Orders and written interpretations and all Purchase Orders and accompanying documents (Requests for Proposals, Detailed Scopes of Work, Purchase Order Proposals, etc.) issued hereunder.
- B. The terms and conditions of a Purchase Order issued by an NJPA Member in connection with any Project, including supplemental technical specifications referenced therein, shall govern.
- C. The Contractor shall, within two (2) business days of receipt of a Purchase Order from an NJPA Member, provide notification to NJPA or their designated representative of each Purchase Order by forwarding a copy of the Purchase Order via email to PO@EZIQC.com or via facsimile to (864) 233-9100.
- D. The Contractor shall, within two (2) business days of sending an Invoice to an NJPA Member, provide notification to NJPA or their designated representative of each Invoice by forwarding a copy of the Invoice via email to Invoice@EZIQC.com or via facsimile to (864) 233-9100.

ARTICLE 2. SCOPE OF WORK

- A. The Contractor shall provide the services required to develop each Purchase Order in accordance with the procedures for developing Purchase Orders set forth in the IQCC Standard Terms and Conditions and the Contract Documents.
- B. Each Purchase Order developed in accordance with this Agreement will be issued by an individual NJPA Member. The Purchase Order will require the Contractor to perform the Detailed Scope of Work within the Purchase Order Completion Time for the Purchase Order Price.
- C. It is anticipated that the Contractor will perform Work primarily in the Geographic Area set forth above. However, the parties may agree that the Contractor can perform Work in a different Geographic Area at its current Adjustment Factors.

ARTICLE 3. THE AGREEMENT PRICE

- A. This Agreement is an indefinite-quantity contract for construction work and services. The Estimated Annual Value of this Agreement is \$ 4,700,000. This is only an estimate and may increase or decrease at the discretion of NJPA.
- B. The Contractor shall perform any or all Tasks in the Construction Task Catalog for the Unit Price appearing therein multiplied by the following Adjustment Factors:

TO BE ENTERED BY NJPA:

- a. Normal Working Hours Prevailing Wage: Work performed from 7:00am until 4:00pm Monday to Friday, except holidays. Contractor shall perform Tasks during Normal Working Hours for the Unit Price set forth in the CTC multiplied by the Adjustment Factor of:

(Specify to four (4) decimal places)

- b. Other Than Normal Working Hours Prevailing Wage: Work performed from 4:00pm to 7:00am Monday to Friday, and any time Saturday, Sunday and Holidays. Contractor shall perform Tasks during Other Than Normal Working Hours for the Unit Price set forth in the CTC multiplied by the Adjustment Factor of:

(Specify to four (4) decimal places)

- c. Normal Working Hours Non Prevailing Wage: Work performed from 7:00am until 4:00pm Monday to Friday, except holidays. Contractor shall perform Tasks during Normal Working Hours for the Unit Price set forth in the CTC multiplied by the Adjustment Factor of:

(Specify to four (4) decimal places)

- d. Other Than Normal Working Hours Non Prevailing Wage: Work performed from 4:00pm to 7:00am Monday to Friday, and any time Saturday, Sunday and Holidays. Contractor shall perform Tasks during Other Than Normal Working Hours for the Unit Price set forth in the CTC multiplied by the Adjustment Factor of:

(Specify to four (4) decimal places)

- e. Non Pre-priced Adjustment Factor: To be applied to Work deemed not to be included in the CTC but within the general scope of the work:

1. _____.
(Specify to four (4) decimal places)

ARTICLE 4. TERM OF THE AGREEMENT

- A. This Agreement has an initial term of one (1) year and a bilateral option provision for three (3) additional terms. The total term of the Agreement cannot exceed four (4) years. One additional one-year renewal-extension may be offered by NJPA to Contractor beyond the original three-year term if NJPA deems such action to be in the best interests of NJPA and its Members. The Contractor may withdraw from the Agreement on each anniversary of the award, provided that the Contractor gives 60 Days written notice of its intent to withdraw. NJPA may, for any reason, terminate this Agreement at any time.
- B. All Purchase Orders issued during a term of this Agreement shall be valid and in effect notwithstanding that the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue, after such term has expired. All terms and conditions of the Agreement apply to each Purchase Order.

ARTICLE 5. SOFTWARE LICENSING

- A. NJPA selected The Gordian Group's (Gordian) software, data and services (IQCC System) for their IQCC program. The system includes Gordian's proprietary ezIQCC, eGordian and Bid Safe IQCC applications (IQCC Applications) and construction cost data (Construction Task Catalog), which shall be used by the Contractor to prepare and submit Price Proposals, subcontractor lists, and other requirements specified by NJPA and NJPA Members. The Contractor's use, in whole or in part, of Gordian's IQCC Applications and Construction Task Catalog and other proprietary materials provided by Gordian for any purpose other than to execute work under this Agreement for NJPA and NJPA Members is strictly prohibited unless otherwise stated in writing by Gordian. The Contractor hereby agrees to abide by the terms of the following IQCC System License:

ARTICLE 6. IQCC SYSTEM LICENSE

- A. Gordian hereby grants to the Contractor, and the Contractor hereby accepts from Gordian for the term of this Agreement or Gordian's contract with NJPA, whichever is shorter, a non-exclusive right, privilege, and license to Gordian's proprietary IQCC System and related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing Contractor's responsibilities to NJPA and NJPA Members under this Agreement ("Limited Purpose"). The Contractor hereby agrees that Proprietary Information shall include, but is not limited to, Gordian's IQCC Applications and support documentation, Construction Task Catalog, training materials, marketing materials and any other proprietary materials provided to Contractor by Gordian. In the event this Agreement expires or terminates as provided herein, or the Gordian's contract with NJPA expires or terminates, this IQCC System License shall terminate and the Contractor shall return all Proprietary Information in its possession to Gordian.
- B. Contractor acknowledges that Gordian shall retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights and trade secrets.

Contractor shall have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor shall not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use or sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.

- C. Contractor acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Agreement, and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to Contractor, subject to federal, state and local laws related to public disclosure. Contractor further acknowledges that a breach of any of the terms of this Agreement by Contractor will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian shall be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity. In the event that it becomes necessary for either party to this IQCC System License to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, whether by litigation, arbitration or other proceedings, the prevailing party shall be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.
- D. In the event of a conflict in terms and conditions between this IQCC System License and any other terms and conditions of this Agreement or any Purchase Order, Order or similar purchasing document (Purchase Order) issued by NJPA or an NJPA Member, this IQCC System License shall take precedence.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

By: _____ National Joint Powers Alliance

Authorized Signature

Print Name

Contractor

Authorized Signature

Print Name

Contract Number: _____ (assigned by NJPA)

BID FORM 11: AGREEMENT TO WORK OUTSIDE THE GEOGRAPHIC AREA

There are times that a Contractor may need to perform work for certain NJPA Members that have facilities in areas outside of the Geographic Area. By acknowledging your acceptance below you are saying that you will consider performing work in such areas in the State or other States. The Contractor will have the option to decline Projects outside of the Geographic Area.

Please circle your intention below:

Yes We agree to consider working in areas outside of the Geographic Area.

No We will NOT consider working outside of the Geographic Area.

Signature

The Bidder shall acknowledge this bid by signing and completing the spaces provided below:

Name of Bidder: _____

City/State/Zip: _____

Telephone No.: _____

If a partnership, names and addresses of partners:

Notarized

Subscribed and sworn to before me this _____ day of _____, 20____

Notary Public in and for the County of _____

State of _____

My commission expires: _____

Signature: _____

BID FORM 12: IQCC/JOC CONTRACT EXPERIENCE (Fill-out 1 per Contract)

Contract Title: _____

Contract Number: _____

Geographic Location: _____

Owner Contact Information

Name: _____

Title: _____

Address: _____

Email: _____

Phone No: _____

Contract Amount (Value of Contract): _____

Contract Amount To-Date: \$ _____

Contract award date: _____

Contract completion date: _____

Description of Contract Work Performed; Describe project completed (i.e., Plumbing, Electrical, Paving, Site Work and approximate dollar value). Attach an additional sheet if necessary: _____

BID FORM 13: IQCC/JOC PROJECT EXPERIENCE (Fill-out 1 per Project)

Project Title: _____

Project Number: _____

Project Location: _____

Owner Contact Information

Name: _____

Title: _____

Address: _____

Email: _____

Phone No: _____

Project Amount: \$ _____

Project Start Date: _____

Project Completion Date: _____

List Key Personnel responsible for the project and respective role (on a separate piece of paper)

Description of Work Performed; Provide a brief description of the Scope of Work. Attach an additional sheet if necessary: _____

BID FORM 14: EXISTING FULL SERVICE OFFICE LOCATION AFFIDAVIT

STATE OF _____

Before me, the undersigned authority, personally appeared _____, who after being duly sworn, deposes and says:

As a prospective Bidder, Contractor acknowledges the provisions set forth in the IQCC IFB Documents, Instructions to Bidders Article 21, regarding the requirement for an existing full-service office location within the Geographic Area at the time of Bid.

Contractor warrants compliance with such provisions and has established and maintains, at or before the time of Bid, a physical full-service office within the Geographic Area located at the address provided below; and the existing office is fully functioning with an established storefront, office-based staffing capable of providing all the professional services required to be delivered under this Contract, adequate material and equipment, and any and all other necessary operational resources.

Office Physical Address: _____

Office Phone Number: _____

Office Fax Number: _____

Contractor is aware that failure to comply with the requirements set forth in the IQCC IFB Documents, Instructions to Bidders Article 23, may cause the Contractor to be considered non-responsive as a Bidder, and may therefore disqualify the Contractor from potential Contract award. Furthermore, if it is found that the Contractor does not maintain a fully staffed and functioning office during the term of this contract NJPA may declare the Contractor in default and initiate termination of the Agreement, according to Article 34 of the Agreement General Conditions.

This Affidavit is given in connection with the Contractor's Bid for IQCC contract number _____.

(Affiant)

STATE OF _____

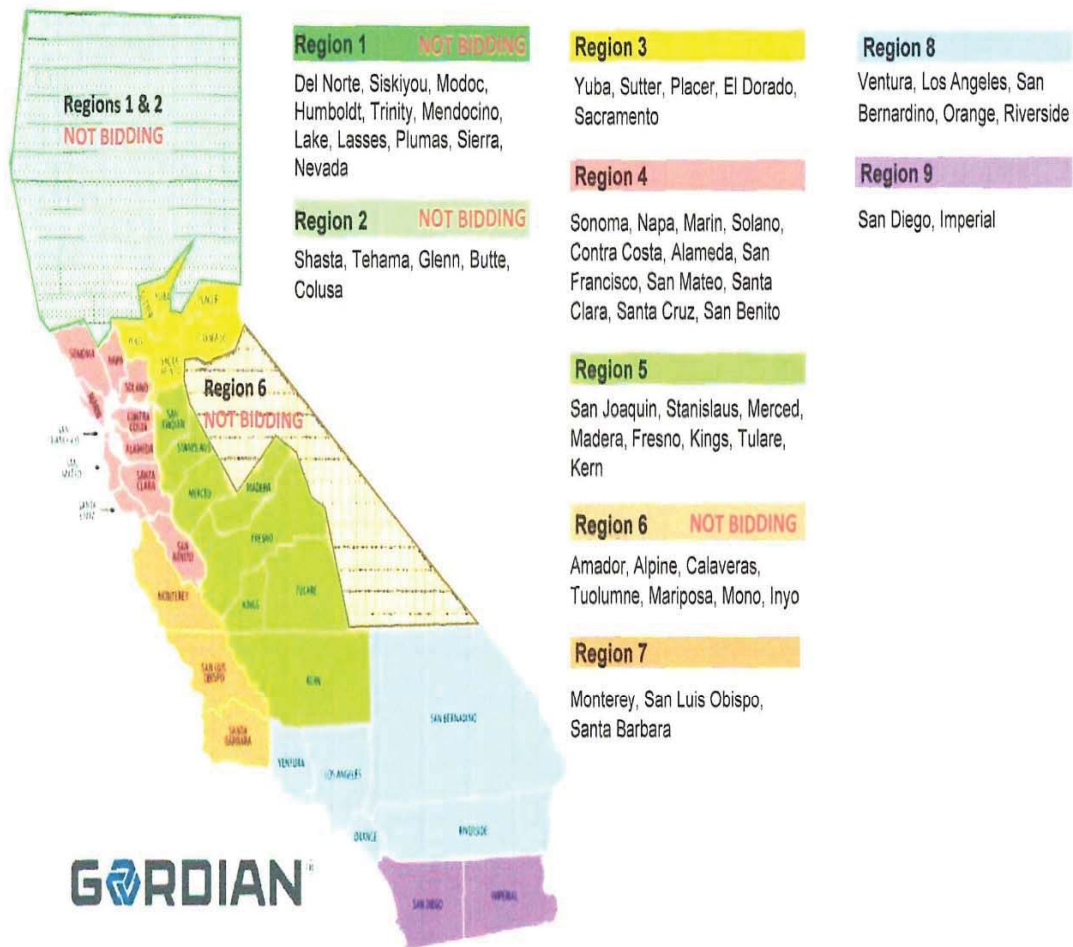
The forgoing instrument was acknowledged before me this _____ day of _____, 20_____ by _____ who is personally known to me and/or has produced _____ as identification.

Signature of Person Taking Acknowledgment

Name of Acknowledger Typed, Printed, or Stamped

SECTION FOUR - EXHIBITS
EXHIBIT A: GEOGRAPHIC MAP OF NJPA CONTRACT AREAS

California ez/QC Regional Map – 2018 New Contracts/Bidding Plan



List of Regions and Counties included in this IFB

Region 3

Region 3	Yuba
Region 3	Sutter
Region 3	Placer
Region 3	El Dorado
Region 3	Sacramento

Region 4

Region 4	Sonoma
Region 4	Napa
Region 4	Marin
Region 4	Solano
Region 4	Contra Costa
Region 4	Alameda
Region 4	San Francisco
Region 4	San Mateo
Region 4	Santa Clara
Region 4	Santa Cruz
Region 4	San Benito

Region 5

Region 5	San Joaquin
Region 5	Stanislaus
Region 5	Merced
Region 5	Madera
Region 5	Fresno
Region 5	Kings
Region 5	Tulare
Region 5	Kern

Region 7

Region 7	Monterey
Region 7	San Luis Obispo
Region 7	Santa Barbara

Region 8

Region 8	Ventura
Region 8	Los Angeles
Region 8	San Bernardino
Region 8	Orange
Region 8	Riverside

Region 9

Region 9	San Diego
Region 9	Imperial

BOOK 2

IQCC STANDARD TERMS AND CONDITIONS AND CONTRACT GENERAL CONDITIONS

SOLICITATION NO.

CA03NCVAA-030618, CA03NCVAB-030618, CA03NCVBA-030618, CA03NCVBB-030618,
CA03NCVCMA-030618, CA03NCVCMB-030618, CA04BAAA-030618, CA04BAAB-030618,
CA04BABA-030618, CA04BABB-030618, CA04BACMA-030618, CA04BACMB-030618, CA05CVAA-
030618, CA05CVAB-030618, CA05CVBA-030618, CA05CVBB-030618, CA05CVCMA-030618,
CA05CVCMB-030618, CA07CCAA-030618, CA07CCAB-030618, CA07CCBA-030618, CA07CCBB-
030618, CA07CCCMA-030618, CA07CCCMB-030618, CA08SLAA-030618, CA08SLAB-030618,
CA08SLBA-030618, CA08SLBB-030618, CA08SLBC-030618, CA08SLBD-030618, CA08SLBE-
030618, CA08SLBF-030618, CA08SLCEA-030618, CA08SLCEB-030618, CA08SLCMA-030618,
CA08SLCMB-030618, CA08SLCRA-030618, CA08SLCRB-030618, CA09SIAA-030618, CA09SIAB-
030618, CA09SIBA-030618, CA09SIBB-030618, CA09SIBC-030618, CA09SIBD-030618, CA09SIBE-
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CA09SICRA-030618, CA09SICRB-030618

INDEFINITE QUANTITY CONSTRUCTION CONTRACT



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BOOK 2

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BOOK 2:

SECTION ONE - IQCC STANDARD TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1 Addendum or Addenda: the additional Bidding Document provisions issued in writing by NJPA prior to the receipt of Bids.
- 1.2 Agreement: the written Agreement between the Contractor and NJPA covering the Work to be performed; and other Contract Documents incorporated in or referenced in the Agreement and made part thereof as if provided therein.
- 1.3 Adjustment Factors: the Contractor's competitively bid price adjustment to the Unit Prices as published in the Construction Task Catalog, Book 3. Adjustment Factors are expressed as an increase to or decrease from the published prices.
- 1.4 IFB Documents: The Invitation for Bid; Book 1 - Project Information, Instructions to Bidders, and Execution Documents; Book 2 - IQCC Standard Terms and Conditions and Contract General Conditions; Book 3 - The Construction Task Catalog; and Book 4 - Technical Specifications.
- 1.5 Construction Task Catalog (CTC): A comprehensive listing of specific construction related Tasks, together with a specific unit of measurement and a Unit Price. Construction Task Catalog is a registered trademark of The Gordian Group, Inc.
- 1.6 Contract Documents: This Agreement; the IFB Documents; (Book 1 - Project Information, Instructions to Bidders and Execution Documents; Book 2 - IQCC Standard Terms and Conditions and General Conditions; Book 3 - Construction Task Catalog (CTC), Book 4 - Technical Specifications) and Addenda thereto, all payment and performance bonds (if any), material and workmanship bonds (if any); wage rate decisions and certified payroll records (if any); Notice of Award; all modifications issued thereto, including Supplemental Purchase Orders/Change Orders and written interpretations and all Purchase Orders and accompanying documents (Requests for Proposals, Detailed Scopes of Work, Proposal Packages, etc.) issued hereunder.
- 1.7 Contractor: The individual, firm, partnership, corporation, joint venture, or other legal entity or combination thereof with whom NJPA has contracted and who is responsible for the acceptable performance of the Agreement and for the payment of all legal debts pertaining to the Work. All references in the Contract Documents to third parties under contract or control of Contractor shall be deemed to be a reference to Contractor.
- 1.8 Days: Calendar days, unless otherwise stated.
- 1.9 Detailed Scope of Work: A document prepared following a Joint Scope Meeting which describes in detail the Work the Contractor will perform for a particular Purchase Order.
- 1.10 Holidays: the specific days designated by NJPA, NJPA Members or the Project Labor Agreement as legal Holidays. NJPA designates the following days as Holidays: New Year's Day, Martin Luther King Jr.'s Birthday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day and the following day, and Christmas Day.
- 1.11 Joint Scope Meeting: a meeting, normally at the Site, to discuss the Work with the Contractor to assist in the development of the Detailed Scope of Work.

- 1.12 Non Pre-priced Task (NPP): a task not included in the Construction Task Catalog but within the general scope and intent of this the Agreement.
- 1.13 Price Proposal: The price proposal prepared by the Contractor using the Construction Task Catalog, Adjustment Factors and appropriate quantities.
- 1.14 Proposal Package: A group of documents and files consisting of the Price Proposal; incidental drawings, sketches, or specification information; quantity take-offs supporting all material quantities; catalog cuts providing information on materials or products, as specifically requested; list of known Subcontractors, construction schedule, back-up for any Non Pre-Priced Tasks, warranty information on special equipment or materials and or other such documentation as the NJPA Member may require.
- 1.15 Project: collectively, the Work to be accomplished by the Contractor in satisfaction of a requirement or group of related requirements pursuant to one or more Purchase Orders.
- 1.16 Purchase Order. The document establishing the engagement by NJPA or the NJPA Member to the Contractor to complete a Detailed Scope of Work for the Purchase Order Price within the Purchase Order Completion Time.
- 1.17 Request for Proposal: The NJPA Member's written request for the Contractor to prepare and submit a Proposal Package for a specific Detailed Scope of Work.
- 1.18 Site: The area upon or in which the Contractor performs the Detailed Scope of Work and such other areas adjacent thereto as may be designated by NJPA or the NJPA Member.
- 1.19 State: The state of California.
- 1.20 Subcontractor: Any person, firm or corporation, other than employees of the Contractor, who or which contracts with the Contractor or its Subcontractors to furnish, or actually furnishes labor, or labor and materials, or labor and equipment, at the Site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.
- 1.21 Supplemental Purchase Order: A purchase order issued to add, delete or change Work from an existing, related Purchase Order.
- 1.22 Technical Specifications: The comprehensive listing of the NJPA Members standards for quality of workmanship and materials, and the standard for the required quality of the Work.
- 1.23 Unit Price: The price published in the Construction Task Catalog for a Task.
- 1.24 Work: The labor, material, equipment and services necessary or convenient to the completion of Purchase Orders.
- 1.25 Purchase Order Completion Time: The period of time set forth in the Purchase Order within which the Contractor must complete the Detailed Scope of Work.
- 1.26 Purchase Order Price: The value of the approved Price Proposal and the lump sum price to be paid to the Contractor for completing the Detailed Scope of Work within the Purchase Order Completion Time.

2. SCOPE OF WORK AND PROCEDURE FOR ORDERING WORK

2.1 Scope of Work

- 2.1.1 This is an indefinite quantity contract for the supplies or services specified, and effective for the period stated in the IFB Documents.
- 2.1.2 Job or performance shall be made only as authorized by Purchase Orders issued in accordance with these IQCC Standard Terms and Conditions.
- 2.1.3 The Scope of Work of this Agreement shall be determined by individual Purchase Orders issued hereunder. The Contractor shall provide all pricing, management, incidental drawings, shop drawings, samples, documents, Work, materials, supplies, parts (to include system components), transportation, plant, supervision, labor, and equipment needed to complete each Purchase Order. The Contractor shall also be responsible for Site safety as well as Site preparation and cleanup during and after construction.
- 2.1.4 The Work shall be conducted by the Contractor in strict accordance with the Agreement and all applicable laws, regulations, codes, or directives including Federal, State, County and City.
- 2.1.5 The Contractor shall maintain accurate and complete records, files and libraries of documents to demonstrate compliance with Federal, State, and local regulations, codes, applicable laws listed herein, and manufacturers' instructions and recommendations which are necessary and related to the Work to be performed.
- 2.1.6 The Contractor shall prepare and submit required reports, maintain current record drawings, and submit required information. The Contractor shall provide: materials lists to include trade names and brand names, and model materials lists to include trade names, brand names, model number, and ratings (if appropriate) for all materials necessary to complete the Purchase Order.
- 2.1.7 In addition to the Tasks in the CTC, Book 3, NJPA may, from time to time, require Non Pre-priced Tasks.
- 2.1.8 All Work shall comply with any applicable standards, including those specified in the following documents. If the Purchase Order specifies a standard which is different or more stringent, the standard used in the Purchase Order shall control:
 - 2.1.8.1 City Building Codes
 - 2.1.8.2 The specific Detailed Scope of Work
 - 2.1.8.3 Technical Specifications – Book 4
 - 2.1.8.3.1 The Technical Specifications, Book 4, are numbered and organized in the Construction Specification Institute's (CSI) master format. All specifications are filed in divisions per CSI guidelines.
 - 2.1.8.3.2 The intent of these Technical Specifications is to furnish concise industry and commercial standards for construction,

maintenance or repair of NJPA Member facilities.

- 2.1.8.3.3 Reference in the Technical Specifications or the CTC to a specific manufacturer, trade name, or catalog is intended to be descriptive but not restrictive and only to indicate to the prospective Bidder items that will be satisfactory.

3. ARCHITECTURAL AND ENGINEERING SERVICES

- 3.1 Under this Agreement it is expected that the level of A/E services and design, if any, will be incidental to the Agreement and therefore any cost associated with this is to be included in the Contractor's Adjustment Factors. If the level of A/E services for a Purchase Order requires that the Contractor provide stamped drawings and plans, the Contractor will be reimbursed according to the appropriate Task in the CTC. The Contractor will be required, as on any construction project, to provide shop drawings, as-built drawings, project layout drawings and sketches as required.
- 3.2 The preparation of incidental drawings/plans, specifications, shop drawings, product data and samples, as-builts and all other documentation required herein by the Contractor as required by individual Purchase Orders is part of the Scope of Work of this Agreement and the cost there of shall be included in the Contractor's Adjustment Factors.

4. TERM OF AGREEMENT

- 4.1 This Agreement is for term shown on the IFB. The Contractor may withdraw from the Agreement on each anniversary of the award, provided that the Contractor provides 60 Days written notice of its intent to withdraw. NJPA may, for any reason, terminate this Agreement at any time.
- 4.2 A NJPA Member may issue a Purchase Order at any time during the term of this Agreement. All Purchase Orders issued during a term of this Agreement shall be valid and in effect notwithstanding that the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue, after such term has expired.

5. GEOGRAPHIC AREA

Contractor will primarily work in the Geographic Area designated. However, if both parties agree, the Contractor may work in another area at the Adjustment Factors bid

6. ESTIMATED ANNUAL VALUE

The Estimated Annual Value of the Agreement is as specified in the IFB. The Contractor is not guaranteed to receive any Purchase Orders under this Agreement. The Estimated Annual Value is not a limit on the total value of Purchase Orders that could be issued to the Contractor in any one year.

7. OPTION TO BILATERALLY EXTEND CONTRACT

- 7.1 This Agreement has an initial term of one (1) year and three (3) bilateral option provisions for three (3) additional terms. The total term of the Agreement cannot exceed four (4) years. One additional one-year renewal-extension may be offered by NJPA to Contractor beyond the total term if NJPA deems such action to be in the best interests of NJPA and its Members.

- 7.2 The Construction Task Catalog issued with this Solicitation will be in effect for the entire duration of this contract.
- 7.3 Economic Price Adjustment: The Adjustment Factors may be updated on each anniversary of the award date to account for changes in construction costs. If NJPA fails to issue the Economic Price Adjustment by the anniversary date, it is the Contractor's responsibility to request the Economic Price Adjustment. Thereafter, the Contractor's Adjustment Factors will be adjusted according to the following:
- 7.3.1. The Contractor's Adjustment Factors will be adjusted according to the following:
- 7.3.1.1. A Base Year Index shall be calculated by averaging the 12 month Construction Cost Indices (CCI) for the average of the twenty cities published in the Engineering News Record (ENR) for the 12 months immediately prior to the month of the Solicitation (e.g. April Solicitation, Base Year Index is April of the prior year to March of the Solicitation year).
 - 7.3.1.2. A Current Year Index shall be calculated by averaging the 12 month Construction Cost Indices (CCI) for the average of the twenty cities published in the Engineering News Record (ENR) for the 12 months beginning with the month of anniversary of the Solicitation (e.g. April Solicitation, Current Year Index is April of the prior year to March of the current year).
 - 7.3.1.3. The Economic Price Adjustment shall be calculated by dividing the Current Year Index by the Base Year Index.
 - 7.3.1.4. The Contractor's original Adjustment Factors shall be multiplied by the Economic Price Adjustment to obtain the Contractor's new Adjustment Factors effective for the next 12 months.
 - 7.3.1.5. Averages shall be obtained by summing the 12 month indices and dividing by 12.
 - 7.3.1.6. All calculations in this article shall be carried to the fifth decimal place and rounded to the fourth decimal place. The following rules shall be used for rounding:
 - 7.3.1.7. The fourth decimal place shall be rounded up when the fifth decimal place is five (5) or greater.
 - 7.3.1.8. The fourth decimal place shall remain unchanged when the fifth decimal place is less than five (5).
- 7.3.2. ENR occasionally revises indices. ENR CCIs used in the calculations described above shall be those currently published at the time the Economic Price Adjustment calculation is performed. No retroactive adjustments will be made as a result of an ENR revision. Revised CCI indices, if any, shall be used in subsequent calculations.
- 7.4. Under all circumstances, should the Contractor submit a Proposal Package with inaccurate Adjustment Factors, the act of submission by the Contractor is a waiver

of all rights to any further compensation above the Purchase Order Price submitted in the Proposal Package.

- 7.5. The Contractor cannot delay submission of the Proposal Package past the due date to take advantage of a scheduled update of the Adjustment Factors. In that event, the Contractor shall use the Adjustment Factors that would have been in effect without the delay.

8. PROCEDURE FOR ORDERING WORK

8.1 Initiation of a Purchase Order

8.1.1 As the need exists, NJPA (or their designated representative) will, on behalf of an NJPA Member, notify the Contractor of a Project and schedule a Joint Scope Meeting.

8.1.2 The Contractor shall attend the Joint Scope Meeting to discuss, at a minimum:

- a. the general scope of the Work,
- b. alternatives for performing the Work and value engineering,
- c. access to the Site and protocol for admission,
- d. hours of operation,
- e. staging area,
- f. requirements for professional services, sketches, drawings, and specifications,
- g. construction schedule,
- h. requirement for bonding
- i. the presence of hazardous materials, and
- j. date on which the Proposal Package is due.

8.1.3 Upon completion of the joint scoping process, NJPA (or their designated representative), working with the NJPA Member and the Contractor, will prepare a Detailed Scope of Work referencing any sketches, drawings, photographs, and specifications required to document accurately the work to be accomplished. NJPA (or their designated representative) will issue a Request for Proposal that will require the Contractor to prepare a Proposal Package. The Detailed Scope of Work, unless modified by both the Contractor and NJPA (or their designated representative), will be the basis on which the Contractor will develop its Price Proposal and NJPA (or their designated representative) and the NJPA Member will evaluate the same. The Contractor does not have the right to refuse to perform any Task or any work in connection with a particular Project.

8.2 **Preparation of the Price Proposal:** The Contractor will prepare Price Proposals in accordance with the following:

8.2.1 **Pre-priced Tasks:** A Pre-priced Task is a Task described and for which a Unit Price is set forth in the Construction Task Catalog. For Pre-priced Tasks the Contractor shall identify the Task from the Construction Task Catalog and the quantities required.

8.2.2 **Non Pre-priced Tasks:** A Non Pre-priced Task is a Task which is not in the Construction Task Catalog.

- 8.2.2.1 If the Contractor will perform the Non Pre-priced Task with its own forces, it shall submit three independent quotes for all materials to be installed and shall provide a breakdown of the labor and equipment costs.
- 8.2.2.2 If the Non Pre-priced Task is to be subcontracted, the Contractor must submit three independent bids from Subcontractors. The Contractor shall not submit a quote or bid from any supplier or Subcontractor that the Contractor is not prepared to use. NJPA may require additional quotes and bids if the suppliers or Subcontractors are not acceptable or if the prices are not deemed reasonable by NJPA or its designated representative.
- 8.2.2.3 **Pricing Non Pre-priced Tasks:** The final price submitted for Non Pre-priced Tasks shall be according to the following formula. Each Non Pre-priced Task must be supported with the necessary back-up documents including the calculation below:

For Work Performed with the Contractor's Own Forces:

1. The hourly rate for each trade classification not in the Construction Task Catalog multiplied by the quantity;
2. The rate for each piece of Equipment not in the Construction Task Catalog multiplied by the quantity;
3. Lowest of three independent quotes for all materials

Total Cost for self-perform work = (A+B+C) x NPP Adjustment Factor

For Work Performed by Sub-contractors: If the Work is to be subcontracted, the Contractor must submit three independent quotes from Subcontractors for the Work. If three quotes or bids can not be obtained, the Contractor will provide the reason in writing for NJPA Member's approval why three quotes cannot be submitted.

D = Lowest of three Subcontractor quotes

Total Cost of Subcontracted Non Pre-priced Task = D x NPP Adjustment Factor

- 8.2.2.4 At the discretion of the NJPA (or their designated representative), Non Pre-priced Tasks, as well as other Tasks, may be added to the CTC during the course of the Agreement. Unit prices will be established based on actual quotes from material suppliers and installers and fixed as a permanent Pre-priced Task in the CTC.
- 8.2.2.5 NJPA (or their designated representative) determination as to whether an item is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.
- 8.2.2.6 The means and methods of construction shall be such as the Contractor may choose; subject however, to NJPA's right to reject means and methods proposed by the Contractor that:
- 8.2.2.6.1 Will not produce finished Work in accordance with the terms of the Contract; or

- 8.2.2.6.2 Unnecessarily increases the price of the Purchase Order when alternative means and methods are available.
- 8.2.3 In the event the Contractor is required to work within a secured facility where labor, material, and equipment must be inspected to pass through a secured perimeter, and all work must be constantly monitored by facility personnel, such as a Department of Corrections prison, the Contractor will be paid for the labor time lost as a result of such perimeter inspection, as well as any loss of time resulting from a temporary shut down of the work site required by the facility, such as a temporary shut down to move prisoners.
- 8.2.4 The value of the Price Proposal shall be calculated by summing the total of the calculations for each Pre-priced Tasks (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- 8.2.5 The Contractor shall submit a complete Proposal Package, which includes:
- a. any incidental drawings or sketches, calculations and or specification information,
 - b. the Price Proposal, and a quantity take-off summary supporting all material quantities contained in the Price Proposal
 - c. catalog cuts providing information on materials or products, as specifically requested,
 - d. back-up for any Non Pre-priced Tasks,
 - e. identification of known Subcontractors and material suppliers,
 - f. a construction schedule,
 - g. for special equipment or materials, warranty information,
- 8.2.6 By submitting a Price Proposal to NJPA, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the price submitted. It is the Contractor's responsibility to include the necessary tasks and quantities in the Price Proposal and apply the appropriate Adjustment Factor(s) prior to delivering it to NJPA.
- 8.2.7 Whenever, because of trade jurisdiction rules or small quantities, the cost of a minor task in the Price Proposal is less than the cost of the actual labor and material to perform such task, the NJPA Member may permit the Contractor to be paid for such task as a Non-Prepriced Task, or use Prepriced labor tasks and material component pricing to cover the actual costs incurred. Provided, however, that there is no other work for that trade on the Project or other work for that trade cannot be scheduled at the same time and the final charge does not exceed \$5,000.

8.3 Time for Submittal of the Proposal Package

- 8.3.1 The Proposal Package shall be submitted by the date indicated on the Request for Proposal. All incomplete Proposal Packages shall be rejected. The time allowed for preparation of the Proposal Package will depend on the complexity and urgency of the Project but should average between seven and fourteen days. On complex Projects, such as those requiring incidental engineering/architectural drawings and approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the necessary documents.

- 8.3.2 In emergency situations and for Projects requiring immediate completion, the Proposal Package may be required quickly and the due date will be so indicated on the Request for Proposal or, the Contractor may begin work immediately, with the paperwork to follow.
- 8.3.3 If the Contractor fails to meet the deadline for submittal of the Proposal Package, this may be reason to suspend issuance of this particular Purchase Order.
- 8.3.4 If the Contractor requires clarifications or additional information regarding the Detailed Scope of Work in order to prepare the Proposal Package, the request must be submitted so that the submittal of the Proposal Package is not delayed.

8.4 **Review of the Proposal Package**

- 8.4.1 NJPA (or their designated representative) and/or the NJPA Member (or their designated representative) will evaluate the Price Proposal by evaluating the nature and number of Tasks proposed against the agreed upon Detail Scope of Work and will determine the reasonableness of approach. Furthermore NJPA (or their designated representative) or the NJPA Member (or their designated representative) may compare the Price Proposal to the NJPA Member cost estimate for the Detailed Scope of Work. NJPA (or their designated representative) or the NJPA Member (or their designated representative) reserves the right to reject a Price Proposal based on unjustifiable/unsupported (with take off details) quantities and/or Tasks, schedule, inadequate documentation, or for any other reason.
- 8.4.2 If NJPA (or their designated representative) and/or the NJPA Member (or their designated representative) finds any part of the Price Proposal unacceptable, NJPA (or their designated representative) or the NJPA Member (or their designated representative) may request the Contractor to re-submit its Price Proposal or cancel the Project. The Contractor is expected to submit correct Price Proposals the first time. However NJPA recognizes that some adjustments might have to be made to the Price Proposal after review by NJPA (or their designated representative) and the NJPA Member (or their designated representative). Therefore, NJPA (or their designated representative) will allow the Contractor to submit the first Price Proposal and a second Price Proposal for each Purchase Order.
- 8.4.3 Additionally, NJPA (or their designated representative) and/or the NJPA Member (or their designated representative) will evaluate all other components of the Proposal Package and may request revisions thereto.
- 8.4.4 **Requested revisions to any and all of the Proposal Package components should be made by the Contractor and resubmitted in three (3) working days or less.** If after the second review by NJPA (or their designated representative) and/or the NJPA Member (or their designated representative), NJPA (or their designated representative) and/or the NJPA Member (or their designated representative) finds requested revisions to the Proposal Package that were not made, this may be reason to suspend that particular Purchase Order.
- 8.4.5 Failure by the Contractor to submit Proposal Packages, and revisions thereto,

in a timely manner (within time frames described above) is grounds for suspension of all future Purchase Orders.

8.4.6 NJPA reserves the right to obtain Price Proposals from any or all of the Contractors awarded an IQCC Contract.

8.4.7 If the Contractor continues to submit Price Proposals which are rejected by NJPA (or their designated representative), NJPA may declare the Contractor in default and initiate termination of the Agreement, according to Article 34 of the Agreement General Conditions.

8.5 Delivery of the Proposal Package

8.5.1 After NJPA (or their designated representative) reaches an agreement with the Contractor on the Proposal Package and any requested revision thereto, if applicable, NJPA (or their designated representative) will assemble and deliver the Proposal Package for the NJPA Member's consideration.

8.6 Review of the Proposal Package by the NJPA Member and Issuance of Purchase Order

8.6.1 The NJPA Member will evaluate the entire Proposal Package.

8.6.2 The NJPA Member may reject a Proposal Package for any reason

8.6.3 The NJPA Member may request changes to or clarifications of any part of the Proposal Package, may require certificates of insurance, and may require a Labor and Material Payment Bond and Performance Bond. The Contractor and NJPA (or their designated representative) will work together to make any requested revisions in a timely manner and resubmit a revised Proposal Package.

8.6.4 Upon approval of the Proposal Package by NJPA (or their designated representative) and the NJPA Member, the NJPA Member may issue a signed Purchase Order, Notice of Award, or similar document accepting the Contractor's offer. The document will include:

- a. Reference to the Detail Scope of Work
- b. The Purchase Order Price
- c. Start date, Purchase Order Completion Time (duration) and completion date
- d. Whether liquidated damages will apply

8.6.5 When the Work Order Package is accepted, the NJPA Member may send to the Contractor a Purchase Order, or a notice of intent to award a Purchase Order (sometimes used if bonding is required) or a similar document.

8.6.6 Once a Contractor has accepted the Purchase Order then the Contractor may not refuse to perform the work. Such actions may be grounds for termination of this Contract or other disciplinary action at the option of NJPA

8.6.7 If performance and payment bonding is required, or if a separate and /or special insurance certificate is required, the Contractor will deliver such requirement to the NJPA member within ten (10) days of notification of the requirement.

9. CHANGES

- 9.1 The NJPA Member reserves the right to make, in writing, at any time during the Work, changes in the Detailed Scope of Work as are necessary to satisfactorily complete the Project, and to delete in whole or in part, or to add to, the Detailed Scope of Work. Such changes, deletions, or additions will not invalidate the Agreement or the Purchase Order nor release the surety, if any, and the Contractor agrees to perform the Work as altered.
- 9.2 All changes, deletions, and additions to the Detailed Scope of Work will be reflected in a Supplemental Purchase Order developed and priced in accordance with the procedure for developing and approving all Price Proposals.

10. MARKETING REQUIREMENTS

- 10.1 The Contractor shall be proactive about selling and marketing this Agreement to public agencies and non-profit organizations. Failure to do so may be grounds for termination of this Agreement or other disciplinary action at the option of NJPA.
- 10.2 NJPA selected its Indefinite Quantity Construction Contracting system based on their research of what provides their Members with the best value and most cost effective results. The Contractor shall avoid all conflicts of interest with the promotion of other IQCC systems to any agency eligible to purchase under this Contract. The promotion of other IQCC systems to any agency eligible to purchase under this Agreement may be grounds for termination of this Contract.
- 10.3 The Contractor must adhere to the following when preparing marketing materials and web sites, and in the use of trademarks and service marks:
 - 10.3.1 The Contractor shall include the NJPA logo and website address on all marketing materials and web sites that mention this Agreement or have anything to do with this Contract.
 - 10.3.2 The Contractor shall include the eziQC logo, website address (www.eziQC.com), and eziQC® telephone number (888-993-9472) on all marketing materials and web sites that mention this Agreement or have anything to do with this Contract.
 - 10.3.3 The Contractor shall be authorized to use NJPA's and Gordian's names, logos, trademarks, service marks and NJPA and Gordian provided materials solely for the presentation and promotion of the availability and use of this Agreement by NJPA Members and Potential NJPA Members, and agrees that all uses of the trademarks and service marks belonging to NJPA and Gordian shall include the appropriate trademark and service mark symbols (® or ™) at all times
 - 10.3.4 The Contractor shall not collect information from an NJPA Member or Potential NJPA Member on Contractor provided forms or web sites. The Contractor shall advise the NJPA Members or Potential NJPA Members to enter all information at the eziQC® website or the Contractor may input project information on the eziQC web site on behalf of an NJPA Member or Potential NJPA Member.
 - 10.3.4 Under no circumstance may copy or branding images of NJPA or Gordian be altered in any way without the express written approval of NJPA or Gordian.
 - 10.3.5 All marketing materials shall be coordinated with and approved by NJPA and Gordian.

11. PUNCH LIST COMPLETION

- 11.1 The Contractor understands and agrees that time is of the essence in closing out the Work of this Contract. Upon Substantial Completion of the Work, the Punch List will be transmitted to the Contractor from the NJPA Member. The Contractor agrees to begin performance of Punch List Work immediately after receipt of the Punch List.
- 11.2 Failure of the Contractor or its Subcontractors to begin the Punch List Work within three (3) business days after receipt of the Punch List will be construed as failure to prosecute the Work of the Contract.
- 11.3 Punch List Work will be continuously prosecuted once begun and completed within thirty (30) Days from the receipt of the Punch List. Should the Contractor fail to complete the Punch List within this period of time, the liquidated damages as identified in Article 26 of the Contract General Conditions will apply.

12. PAYMENT AND PERFORMANCE BONDS AND MATERIAL AND WORKMANSHIP BONDS

If required by the NJPA Member for a particular Work Order, the Contractor shall deliver a Labor and Material Payment Bond and a Performance Bond in the amount of such Work Order. If required by the NJPA Member for a particular Work Order, the Contractor shall deliver Material and Workmanship Bonds in the amount required by the NJPA Member. The bonds must be in a form, and executed by a surety, acceptable to the NJPA Member. The bonds must be received before the Notice to Proceed will be issued. The Contractor shall be compensated for the cost of the bonds up to 2% of the Work Order Price through the Reimbursable Fee work task in the Construction Task Catalog. The Contractor shall apply a 1.1000 Adjustment Factor to the Reimbursable Fee work task rather than applying the Contractor's competitively bid Adjustment Factor.

13. COMPUTER SOFTWARE

The Contractor shall maintain at its office for its use a computer with an internet connection. The Contractor will be furnished with a copy of the internet based eGordian® software which will allow the Contractor to generate Price Proposals. This software program contains an electronic copy of the Construction Task Catalog and allows the Contractor to select items and quantities for use in a particular Price Proposal. The software generates a Price Proposal in a preset format acceptable to the NJPA Member. There is no separate charge to the Contractor for the software and the related software training.

14. PREPAYMENT OPTION

An NJPA Member may elect to deposit the funds for any Project or Purchase Order in a special account established by NJPA for the purpose of paying the Contractors for work to be performed. Funds shall be transferred into and out of such account in strict accordance with the rules and procedures established therefor.

SECTION TWO – CONTRACT GENERAL CONDITIONS

1. PROJECT MANAGER

Project Manager: the person or firm designated by an NJPA Member and authorized to represent the NJPA Member in connection with a signed Purchase Order.

2. NJPA MEMBER’S RIGHT TO STOP WORK

The NJPA Member may order the Contractor to stop the Work on any Purchase Order, or any portion thereof, at any time for any reason.

3. NJPA MEMBER’S RIGHT TO COMPLETE WORK

If the Contractor has been ordered to stop the Work, the NJPA Member may, without prejudice to other remedies, have the Work completed by any available means.

4. REVIEW OF FIELD CONDITIONS

4.1 Before submitting a Price Proposal, the Contractor shall carefully study the Detailed Scope of Work, as well as the information furnished by the NJPA Member, shall take field measurements of any existing conditions related to the Work and shall observe any conditions at the Site affecting it. Any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Project Manager.

4.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Project Manager, but it is recognized that the Contractor’s review is made in the Contractor’s capacity as a Contractor and not as a licensed design professional. The Contractor is not required to ascertain that the Detailed Scope of Work is in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Project Manager.

5. SUPERVISION

5.1 The Contractor shall supervise and direct the performance of the Detailed Scope of Work, using the Contractor’s best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work. If the Detailed Scope of Work gives specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the Site safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Project Manager and shall not proceed with that portion of the Work without further written instructions from the Project Manager.

5.2 The Contractor shall be responsible to the NJPA Member for acts and omissions of the Contractor’s employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the work for or on behalf of the Contractor or any of its Subcontractors.

5.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

5.4 Effective July 18, 2008, in addition to the existing prevailing wage rate law, Labor Law §220, section 220-h, all laborers, workers, and mechanics working on the site of public

work projects of at least \$250,000 are required to be certified as having successfully completed the OSHA 10-hour Construction Safety and Health Course S1537-A..

6. WORKMANSHIP AND QUALITY

- 6.1 The Contractor may make substitutions only with the consent of the Project Manager.
- 6.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in the portions of the Work assigned to them.

7. WARRANTY

- 7.1 All Work furnished under this Agreement shall be guaranteed against defective materials and workmanship, improper performance and non-compliance with the Contract Documents for a period of one year after final acceptance of the Work, except as otherwise specified in other parts of the Contract Documents, or within such longer period of time as may be prescribed by law or provided by the manufacturer.
- 7.2 During the guarantee period, the Contractor shall repair and replace at Contractor's own expense, all Work that may develop defects whether such defects may be inherent in the equipment or materials, in the functioning of the piece of equipment, or in the functioning and operation of pieces of equipment operating together as a functional unit. Any equipment or material which is repaired or replaced shall have the guarantee period extended for a period of one year from the date of the last repair or replacement.
- 7.3 If the Contractor fails to repair, replace, rebuild or restore such defective or damaged Work promptly after receiving such notice, the NJPA Member shall have the right to have the Work done by others and to deduct the cost thereof from the monies owed to the Contractor. If the amount owed is insufficient to cover such costs, the Contractor shall be liable to pay such deficiency on demand.
- 7.4 The Project Manager's certificate setting forth the fair and reasonable cost of repairing, replacing, rebuilding or restoring any damaged or defective Work when performed by one other than the Contractor shall be binding and conclusive as the amount thereof upon the Contractor.
- 7.5 The Contractor shall obtain all manufacturer's warranties and guarantees of all equipment and materials required by this Agreement in the name of the NJPA Member.

8. PERMITS, FILING

- 8.1 Contractor shall make the necessary arrangements for and obtain all filings and permits required for the Work, including the preparation of all drawings, sketches, calculations and other documents and information that may be required therefor. If the Contractor is required to pay an application fee for filing a project, a fee to obtain a building permit, or any other permit fee to the City, State or some other governmental or regulatory agency, then the amount of such fee paid by the Contractor for which a receipt is obtained shall be treated as a Reimbursable Task to be paid a mark-up of 10% on the fees paid to a governmental entity to obtain filings and permits. Contractor shall submit written documentation of such fees. The 10% mark-up shall cover all costs over and above the filing and permit fees, including expeditor fees.
- 8.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.
- 8.3 It is not the Contractor's responsibility to ascertain that the Detailed Scope of Work is in

accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that any portion of the Detailed Scope of Work is at variance therewith, the Contractor shall promptly notify the Project Manager in writing.

9. PERSONNEL

The Contractor shall employ competent personnel for the development of the Project's Detailed Scope of Work, the preparation of the Price Proposal and the execution of the Work. During the performance of the Work, the superintendent assigned to the Project shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

10. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

10.1 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Detailed Scope of Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Detailed Scope of Work. Submittals which are not required by the Contract Documents may be returned by the Project Manager without action.

10.2 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Project Manager Shop Drawings, Product Data, Samples and similar submittals required with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the NJPA Member or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Project Manager without action.

10.3 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Detailed Scope of Work and of the Contract Documents.

10.4 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Project Manager.

10.5 The Work shall be performed in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Project Manager's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Project Manager in writing of such deviation at the time of submittal and (1) the Project Manager has given written approval to the specific deviation as a minor change in the Work, or (2) a Supplemental Purchase Order or written notice has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Project Manager's approval thereof.

10.6 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Project Manager on previous submittals. In the absence of such written notice the Project Manager's approval of a resubmission shall not apply to such revisions.

10.7 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Detailed Scope of Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Detailed Scope of Work, the NJPA Member will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Project Manager. The NJPA Member shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the NJPA Member has specified to the Contractor all performance and design criteria that such services must satisfy. The Project Manager will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Detailed Scope of Work. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Detailed Scope of Work.

11. CUTTING AND PATCHING

- 11.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Detailed Scope of Work or to make its parts fit together properly.
- 11.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the NJPA Member or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the NJPA Member or a separate contractor except with written consent of the NJPA Member and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the NJPA Member or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

12. CLEANING UP

- 12.1 The Contractor shall keep the Site and surrounding areas free from accumulation of waste materials or rubbish caused by operations under the Purchase Order. At completion of the Work, the Contractor shall remove from and about the Site all waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.
- 12.2 If the Contractor fails to clean up, the NJPA Member may do so and the cost thereof shall be charged to the Contractor.

13. ACCESS TO THE WORK

The Contractor shall provide the Project Manager access to the Work at all times.

14. ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the NJPA Member and Project Manager harmless from loss on account thereof, but shall not be responsible for such

defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the NJPA Member or Project Manager. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Project Manager.

15. INDEMNIFICATION

15.1 To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by insurance purchased by the Contractor, the Contractor shall indemnify and hold harmless NJPA, the NJPA Member, Project Manager, consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph.

15.2 In claims against any person or entity indemnified under this Paragraph by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

16. SUBCONTRACTORS

16.1 The Contractor, as soon as practicable after award of the Purchase Order, shall furnish in writing to the Project Manager the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each portion of the Work. The Project Manager will promptly reply to the Contractor in writing stating whether or not, after due investigation, Contractor has reasonable objection to any such proposed person or entity. Failure of the Project Manager to reply promptly shall constitute notice of no reasonable objection.

16.2 The Contractor shall not contract with a proposed person or entity to whom the NJPA Member or Project Manager has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

16.3 If the NJPA Member or Project Manager has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the NJPA Member or Project Manager has no reasonable objection.

17. COORDINATION WITH OTHER CONTRACTORS

17.1 The NJPA Member reserves the right to perform construction or operations related to the Purchase Order with the NJPA Member's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site.

17.2 The NJPA Member shall provide for coordination of the activities of the NJPA Member's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the NJPA Member in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the NJPA Member until subsequently revised.

18. REQUEST FOR EXTENSION OF TIME

18.1 If the Contractor is delayed at any time in the commencement or progress of the Detailed Scope of Work by an act or neglect of the NJPA Member or Project Manager, or of an employee of either, or of a separate contractor employed by the NJPA Member, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by other causes which the Project Manager determines may justify delay, then the Purchase Order Completion Time shall be extended for such reasonable time as the Project Manager may determine.

18.2 The Contractor agrees to make no claim for damages for the delay in the performance of any Purchase Order occasioned by any act or omission to act of the NJPA Member, Project Manager or any of their representatives, and agrees that any such claim shall be fully compensated for by an extension of time as provided herein.

19. PARTIAL PAYMENTS

19.1 The Contractor may submit a monthly Application for Payment for Work completed to date. The Contractor shall submit Certified Payroll Records, and such other supporting documentation as may be required by the Project Manager. The Contractor may be required to submit Certified Payroll Records online. The Project Manager will inspect the work within a reasonable time and the NJPA Member shall make partial payments to the Contractor based on the approved value of completed Work.

19.2 The NJPA Member may withhold up to 5% of each payment until final completion of the Purchase Order.

19.3 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the NJPA Member, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Sub-Subcontractors in a similar manner.

20. FINAL PAYMENTS

20.1 The Contractor shall notify the Project Manager when the Detailed Scope of Work is complete and ready for final inspection. The Project Manager will promptly make such inspection. If the Project Manager finds the Detailed Scope of Work complete and all final documentation submitted, the Project Manager will notify the Contractor that a final Application for Payment may be submitted.

20.2 The Contractor may then submit a final Application for Payment. The Contractor shall submit Certified Payroll Records and such supporting documentation as may be required by the Project Manager. The NJPA Member shall make final payment to the Contractor.

20.3 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

21. PARTIAL OCCUPANCY OR USE

21.1 The NJPA Member may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the NJPA Member and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Project Manager. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the NJPA Member and Contractor.

21.2 Immediately prior to such partial occupancy or use, the NJPA Member, Contractor and Project Manager shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

21.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

22. IDENTIFICATION AND SECURITY REQUIREMENTS

The Contractor shall comply with all identification and security requirements that the NJPA Member may establish.

23. PROTECTION OF PERSONS AND PROPERTY

23.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

23.1.1 employees on the Work and other persons who may be affected thereby;

23.1.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

23.1.3 other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

23.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

23.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Detailed Scope of Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards promulgating safety regulations and notifying NJPA Member and users of adjacent sites

and utilities.

- 23.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.
- 23.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except damage or loss attributable to acts or omissions of the NJPA Member or Project Manager or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's other obligations included herein.
- 23.6 The Contractor shall designate a responsible member of the Contractor's organization at the Site whose duty shall be the prevention of accidents. This person shall be the Contractor' superintendent unless otherwise designated by the Contractor in writing to the Project Manager.
- 23.7 The Contractor shall not load or permit any part of the construction or Site to be loaded so as to endanger its safety.

24. HAZARDOUS MATERIALS

- 24.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to lead based paint, asbestos or polychlorinated biphenyl (PCB), encountered on the Site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop the Work in the affected area and report the condition to the Project Manager in writing.
- 24.2 The NJPA Member shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the NJPA Member shall furnish in writing to the Contractor and Project Manager the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the Task of removal or safe containment of such material or substance. The Contractor and the Project Manager will promptly reply to the NJPA Member in writing stating whether or not either has reasonable objection to the persons or entities proposed by the NJPA Member. If either the Contractor or Project Manager has an objection to a person or entity proposed by the NJPA Member, the NJPA Member shall propose another to whom the Contractor and the Project Manager have no reasonable objection. When the material or substance has been rendered harmless, the Work in the affected area shall resume upon written agreement of the NJPA Member and Contractor. The Purchase Order Completion Time shall be extended appropriately.
- 24.3 To the fullest extent permitted by law, the NJPA Member shall indemnify and hold harmless the Contractor, Subcontractors, Project Manager, Project Manager's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described herein and has not

been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

- 24.4 The NJPA Member shall not be responsible for materials and substances brought to the Site by the Contractor unless such materials or substances were required by the Detailed Scope of Work.
- 24.5 If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing the Work as required by the Contract Documents, the NJPA Member shall indemnify the Contractor for all cost and expense thereby incurred.

25. INSURANCE REQUIREMENTS

- 25.1 The Contractor shall procure and maintain, at its own cost and expense, until final acceptance of all the Work covered by this Agreement, the following kinds of insurance:
- 25.1.1 Workers' Compensation Insurance. A policy complying with the requirements of the laws of the State in which the Project is located.
- 25.1.2 General Liability and Property Damage Insurance. A standard general comprehensive liability insurance policy or a commercial general liability insurance policy issued to and covering the liability of the Contractor for all Work and operations under this Agreement, including, but not limited to, contractual and completed operations coverage. The coverage under such policy shall not be less than the following limits: Bodily Injury and Property Damage Liability, \$ 2,000,000 Each Occurrence, 2,000,000 Aggregate.
- 25.1.3 Automobile Liability and Property Damage Insurance. A policy covering the use in connection with the Work covered by the Contract Documents of all owned, non-owned and hired vehicles bearing, or, under the circumstances under which they are being used, required by the Motor Vehicle Laws of the State in which the Project is located. The coverage under such policy shall not be less than the following limit: Bodily Injury and Property Damage Liability, \$2,000,000 Each Occurrence.
- 25.1.4 All Risk Builders Risk Insurance. Where specifically required in the Detailed Scope of Work, the Contractor shall provide, before the Purchase Order is issued, Builders' Risk Insurance in an amount at least equal to the Purchase Order Price in a form and by a carrier acceptable to the NJPA Member. The cost of such Builders Risk Policy shall be reimbursed to the Contractor as a reimbursable task.
- 25.1.5 Pollution Liability Insurance. If a Project involves asbestos abatement encapsulation or other activities involving hazardous materials, the Contractor, Subcontractor or other party responsible for such Work shall procure and maintain a liability insurance policy issued to and covering the liability, of the Contractor, Subcontractor or other party engaged in the removal, or handling of hazardous materials, for bodily injury, illness, sickness or property damage caused by exposure in an amount not less than \$2,000,000 per occurrence and \$2,000,000 aggregate. The cost of Pollution Liability Insurance is included in the Unit Prices and will not be reimbursed separately.
- 25.2 The Contractor shall provide certificates of insurance. Such certificates shall be on a form prescribed by NJPA, shall list the various coverages and shall contain, in addition to any

provisions hereinbefore required, a provision that the policy shall not be changed or

cancelled and that it will be automatically renewed upon expiration and continued in force until final acceptance by NJPA, or NJPA Member, of all the work covered by the Agreement, unless NJPA is given fifteen (15) days' written notice to the contrary. Upon request, the Contractor shall furnish NJPA or any NJPA Member with a certified copy of each policy.

25.3 All insurance required to be procured and maintained as aforesaid must be procured from insurance companies approved by NJPA.

25.4 If at any time any of the above-required insurance policies should be cancelled, terminated or modified so that insurance is not in effect as above required, then, if NJPA shall so direct, the Contractor shall suspend performance of the work. If the said work is so suspended, no extension of time shall be due on account thereof. If said work is not suspended, then NJPA may, at its option, obtain insurance affording coverage equal to that above required, the cost of such insurance to be payable by the Contractor.

25.5 Should the awarded Contractor retain a Subcontractor to perform any of the services mentioned herein, it is the Contractor's responsibility to insure that the Subcontractor(s) maintains the same types of insurance coverage in accordance with the requirements and amounts indicated herein.

25.6 NJPA, its officers, and employees must be included as a named insured. Any NJPA Member, its officials, officers, and employees must be included as a named insured when so requested by the NJPA Member.

26. LIQUIDATED DAMAGES

26.1 If provided for in the Request for Proposal, NJPA may assess liquidated damages for each day after the Purchase Order Completion Time that the Detailed Scope of Work is not complete. It is understood and agreed by and between Contractor, NJPA and the NJPA Member, that time is of the essence in all matters relating to Liquidated Damages.

26.2 The liquidated damages shall be determined on a Purchase Order by Purchase Order basis.

27. TESTS AND INSPECTIONS

27.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the NJPA Member, or with the appropriate public authority. The Contractor shall give the Project Manager timely notice of when and where tests and inspections are to be made so that the Project Manager may be present for such procedures.

27.2 If the Project Manager, NJPA Member or public authorities having jurisdiction determine that portions of the Work require, through no fault of the Contractor, additional testing, inspection or approval, the Project Manager will instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the NJPA Member, and the Contractor shall give timely notice to the Project Manager of when and where tests and inspections are to be made so that the Project Manager may be present for such procedures. Such costs shall be at the NJPA Member's expense.

- 27.3 If such procedures for testing, inspection or approval reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Project Manager's services and expenses shall be at the Contractor's expense.
- 27.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Project Manager.
- 27.5 If the Project Manager is to observe tests, inspections or approvals required by the Contract Documents, the Project Manager will do so promptly and, where practicable, at the normal place of testing.
- 27.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

28. GOVERNING LAW

- 28.1 The Agreement shall be governed by the law of the place where the Project is located.
- 28.2 NJPA's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Section 3.736, and other applicable law.
- 28.3 All claims and controversies between NJPA and Contractor shall be subject to the laws of the State of Minnesota and are to be resolved in Todd County Minnesota.

29. COMPLIANCE WITH LAWS

In connection with the performance of this Agreement, the Contractor shall comply with all applicable laws, rules and regulations. The parties hereto agree that every provision of law required to be inserted herein be deemed a part hereof. It is further agreed that if any such provision is not inserted or is incorrectly inserted, through mistake or otherwise, this Agreement shall be deemed amended so as to comply strictly with the law.

30. SEVERANCE

If the Contract Documents contains any unlawful provision not an essential part of the Contract Documents and which shall not appear to have been a controlling or material inducement to the making thereof, the same shall be deemed of no effect and shall, upon notice by either party, be deemed stricken without affecting the binding force of the remainder.

31. LICENSE

Contractor shall obtain all licenses required from all public agencies with jurisdiction over the Work and shall keep these documents properly posted at the Site at all times during the performance of the Work.

32. ASSIGNMENT

No right or interest in this Agreement shall be assigned or transferred by the Contractor without prior written consent of NJPA. No delegation of any duty of the Contractor shall be made without prior written consent of NJPA.

33. CLAIMS AND DISPUTES

All claims or disputes between the NJPA Member and Contractor shall be resolved by NJPA Member's representative.

34. TERMINATION BY NJPA FOR CAUSE

- 34.1 NJPA may terminate the Agreement if the Contractor:

- 34.1.1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- 34.1.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- 34.1.3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- 34.1.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

34.2 If an unpaid balance of one or more Purchase Orders exceeds the costs of finishing the Work, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to NJPA.

34.3 The NJPA Member may not terminate this Agreement between the NJPA and the Contractor.

35. NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

35.1 The Contractor shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, age, color, sex or National origin, sexual orientation, marital status, political affiliation, or physical or mental disability if qualified. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment without regard to their race, religion, color, sex or National origin, sexual orientation, marital status, political affiliation, or physical or mental disability. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

35.2 The Contractor shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability. In addition, the Contractor shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

36. AUDITS

NJPA may, at any time after reasonable notice, audit Contractor's records to establish total compliance and to verify the prices charged are in accordance with the Agreement. Contractor agrees to provide verifiable documentation and tracking in a timely manner.

37. GRATUITIES

NJPA may cancel this Agreement if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the

Contractor, to any employee of NJPA, are deemed to be excessive with a view toward securing a contract or with respect to the performance of this contract. However, paying the expenses of normal business meals or travel to meetings as described and allowed by law, which are generally made available to all eligible school and government employees, shall not be prohibited by this paragraph. Samples of software, equipment, or hardware provided to NJPA for demonstration, evaluation or loan purposes are not considered gratuities.

38. FEDERAL FUNDS (APPLIES TO WORK ORDERS DESIGNATED BY AN AGENCY AS FEDERAL ASSISTED)

A. This may be a Federal assisted construction contract and Federal Labor standards, including the Davis-Bacon requirements, will be enforced. If Federal and State wage rates are applicable, then the higher of the two will prevail. A copy of the Department of Labor Wage Rate Determination applicable to this contract must be included.

B. Particulars of the current Prevailing Wage Scale, which are applicable to the work contemplated under these specifications, are filed with the awarding entity and the agency and must be posted at the project site.

C. Certification of compliance with Executive Order 11246, as amended, "EACH BIDDER/OFFER, CONTRACTOR, OR SUBCONTRACTOR HEREBY CERTIFIES THAT IT WILL FULLY COMPLY WITH EXECUTIVE ORDER 11246, AS AMENDED BY EXECUTIVE ORDER 11375, AND THE EQUAL OPPORTUNITY CLAUSE AND RULES AND REGULATIONS ISSUED THEREUNDER, WHICH ARE HEREBY INCORPORATED BY REFERENCE AS APPROPRIATE. THE CONTRACTOR COMMITS ITSELF TO SUCH COMPLIANCE BY SUBMITTING A PROPERLY SIGNED BID OR OFFER BY SIGNING OR OTHERWISE ACCEPTING A CONTRACTOR SUBCONTRACT."

D. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

E. The Contractor shall allow the Agency access to Contractor's employment records during regular business hours to verify compliance with these provisions when so requested by the Agency.

F. If this is a HUD Section 3 contract and bidders must address the Section 3 employment and contracting goals to be considered a Section 3 responsive bidder. The Contract will be awarded to a Section 3 responsive bidder, provided that the bid amount is reasonable. The definition of a responsive bidder shall include consideration of a bidder's responsiveness to Section 3 requirements. A Section 3 responsive bidder who qualifies as a Section 3 Business concern or one who makes a commitment to meet the employment goal for Section 3 resident(s) and/or meets the contracting goals for Section 3 business firm(s). A bidder who is nonresponsive to Section 3 requirements shall be considered a nonresponsive bidder for the purpose of evaluation bids for a Section 3 contract. The Contract will be awarded to a Section 3 responsive bidder, provided that the bid amount is reasonable. A reasonable bid is a bid that is not more than ten percent (10%) higher than the lowest bid received from any qualified source. If a Section 3 responsive bid is not received within the ten percent (10%) zone of consideration for Contract award, the award shall be made to the bidder who submits the lowest bid.

G. Companies or individuals that are presently debarred, suspended, proposed for debarment, or declared ineligible for award of federally funded contracts or subcontracts

are also ineligible for award of this contract, either as the prime Contractor or as a subcontractor.

H. The following requirements apply to those Work Orders designated by the agency as Federally Assisted.

- Federal Equal Employment Opportunity/Affirmative Action Requirements
- Federal Labor Standards Provisions
- Compliance with Clean Air and Water Acts
- Non-collusion Affidavit to Be Executed By Bidder and Submitted With Bid
- Non-Segregated Facilities Certification
- Certification With Regard to The Performance of Previous Contracts Or Subcontracts Subject to The Equal Opportunity Clause And The Filing Of Required Reports
- Agency Lobbyists Codes
- Contractor List of Proposed Subcontractors
- Certification of Understanding and Authorization
- Equal Employment Opportunity Commitment
- Sample Outreach Efforts for Contractors Seeking Section 3 Resident Employees
- Section 3 Business Certification Form
- Section 3 Economic Opportunity Plan
- Section 3 Clause

39. FEDERAL HIGHWAY ADMINISTRATION (FHWA) CIRCULAR 1273

(See Exhibit A) The Federal Highway Administration (FHWA) Circular 1273 shall be applicable to all Projects funded by the FHWA performed under CA01SA-080817, CA02SA-080817, CA03SA-080817, CA01CA-080817, CA02CA-080817, CA01VA-080817 and CA02VA-08081

40. SAN DIEGO HOUSING COMMISSION SPECIAL PROVISIONS FOR NATIONAL JOINT POWER ALLIANCE (NJPA)

(See Exhibit B) Please know exhibit B applies to work being done by the San Diego Housing Commission. The following Provisions provided by the San Diego Housing Commission shall be applicable and followed on all San Diego Housing projects. All forms and directives shall be completed before any purchase orders are issued under this contract.

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EXHIBIT A

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Non segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Government wide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60- 1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. **Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA- 1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b) (2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally- assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

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

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractors or subcontractors registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. 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 Federal 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.

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

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the sub region, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

End of Exhibit A

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Exhibit B

**San Diego Housing Commission
Special Provisions
For
National Joint Powers Alliance
Job Order Contracting**

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

**Instructions to Bidders for Contracts
Public and Indian Housing Programs**

Instructions to Bidders for Contracts

Public and Indian Housing Programs

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1. Bid Preparation and Submission

(a) Bidders are expected to examine the specifications, drawings, all instructions, and, if applicable, the construction site (see also the contract clause entitled **Site Investigation and Conditions Affecting the Work** of the *General Conditions of the Contract for Construction*). Failure to do so will be at the bidders' risk.

(b) All bids must be submitted on the forms provided by the Public Housing Agency/Indian Housing Authority (PHA/IHA). Bidders shall furnish all the information required by the solicitation. Bids must be signed and the bidder's name typed or printed on the bid sheet and each continuation sheet which requires the entry of information by the bidder. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority. (Bidders should retain a copy of their bid for their records.)

(c) Bidders must submit as part of their bid a completed form HUD-5369-A, "Representations, Certifications, and Other Statements of Bidders."

(d) All bid documents shall be sealed in an envelope which shall be clearly marked with the words "Bid Documents," the Invitation for Bids (IFB) number, any project or other identifying number, the bidder's name, and the date and time for receipt of bids.

(e) If this solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words "No Bid" in the space provided for any item on which no price is submitted.

(f) Unless expressly authorized elsewhere in this solicitation, alternate bids will not be considered.

(g) Unless expressly authorized elsewhere in this solicitation, bids submitted by telegraph or facsimile (fax) machines will not be considered.

(h) If the proposed contract is for a Mutual Help project (as described in 24 CFR Part 905, Subpart E) that involves Mutual Help contributions of work, material, or equipment, supplemental information regarding the bid advertisement is provided as an attachment to this solicitation.

2. Explanations and Interpretations to Prospective Bidders

(a) Any prospective bidder desiring an explanation or interpretation of the solicitation, specifications, drawings, etc., must request it at least 7 days before the scheduled time for bid opening. Requests may be oral or written. Oral requests must be confirmed in writing. The only oral clarifications that will be provided will be those clearly related to solicitation procedures, i.e., not substantive technical information. No other oral explanation or interpretation will be provided. Any information given a prospective bidder concerning this solicitation will be furnished promptly to all other prospective bidders as a written amendment to the solicitation, if that information is necessary in submitting bids, or if the lack of it would be prejudicial to other prospective bidders.

(b) Any information obtained by, or provided to, a bidder other than by formal amendment to the solicitation shall not constitute a change to the solicitation.

3. Amendments to Invitations for Bids

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

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date on the bid form, or (3) by letter, telegram, or facsimile, if those methods are authorized in the solicitation. The PHA/IHA must receive acknowledgement by the time and at the place specified for receipt of bids. Bids which fail to acknowledge the bidder's receipt of any amendment will result in the rejection of the bid if the amendment(s) contained information which substantively changed the PHA's/IHA's requirements.

(c) Amendments will be on file in the offices of the PHA/IHA and the Architect at least 7 days before bid opening.

4. Responsibility of Prospective Contractor

(a) The PHA/IHA will award contracts only to responsible prospective contractors who have the ability to perform successfully under the terms and conditions of the proposed contract. In determining the responsibility of a bidder, the PHA/IHA will consider such matters as the bidder's:

- (1) Integrity;
- (2) Compliance with public policy;
- (3) Record of past performance; and
- (4) Financial and technical resources (including construction and technical equipment).

(b) Before a bid is considered for award, the bidder may be requested by the PHA/IHA to submit a statement or other documentation regarding any of the items in paragraph (a) above. Failure by the bidder to provide such additional information shall render the bidder nonresponsible and ineligible for award.

5. Late Submissions, Modifications, and Withdrawal of Bids

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

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

(2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the PHA/IHA that the late receipt was due solely to mishandling by the PHA/IHA after receipt at the PHA/IHA; or

(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 observed holidays.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) of this provision.

(c) The only acceptable evidence to establish the date of mailing of a late bid, 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 bid, 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, bidders should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(d) The only acceptable evidence to establish the time of receipt at the PHA/IHA is the time/date stamp of PHA/IHA on the proposal wrapper or other documentary evidence of receipt maintained by the PHA/IHA.

(e) The only acceptable evidence to establish the date of mailing of a late bid, 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, bidders should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and Failure by a bidder to acknowledge receipt of the envelope or wrapper.

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

(g) Bids 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 the exact time set for opening of bids; provided that written confirmation of telegraphic or facsimile withdrawals over the signature of the bidder is mailed and postmarked prior to the specified bid opening time. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

6. Bid Opening

All bids received by the date and time of receipt specified in the solicitation will be publicly opened and read. The time and place of opening will be as specified in the solicitation. Bidders and other interested persons may be present.

7. Service of Protest

(a) Definitions. As used in this provision:

"Interested party" means an actual or prospective bidder whose direct economic interest would be affected by the award of the contract.

"Protest" means a written objection by an interested party to this solicitation or to a proposed or actual award of a contract pursuant to this solicitation.

(b) Protests shall be served on the Contracting Officer by obtaining written and dated acknowledgement from —

[Contracting Officer designate the official or location where a protest may be served on the Contracting Officer]

(c) All protests shall be resolved in accordance with the PHA's/IHA's protest policy and procedures, copies of which are maintained at the PHA/IHA.

8. Contract Award

(a) The PHA/IHA will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the PHA/IHA considering only price and any price-related factors specified in the solicitation.

(b) If the apparent low bid received in response to this solicitation exceeds the PHA's/IHA's available funding for the proposed contract work, the PHA/IHA may either accept separately priced items (see 8(e) below) or use the following procedure to determine contract award. The PHA/IHA shall apply in turn to each bid (proceeding in order from the apparent low bid to the high bid) each of the separately priced bid deductible items, if any, in their priority order set forth in this solicitation. If upon the application of the first deductible item to all initial bids, a new low bid is within the PHA's/IHA's available funding, then award shall be made to that bidder. If no bid is within the available funding amount, then the PHA/IHA shall apply the second deductible item. The PHA/IHA shall continue this process until an evaluated low bid, if any, is within the PHA's/IHA's available funding. If upon the application of all deductibles, no bid is within the PHA's/IHA's available funding, or if the solicitation does not request separately priced deductibles, the PHA/IHA shall follow its written policy and procedures in making any award under this solicitation.

(c) In the case of tie low bids, award shall be made in accordance with the PHA's/IHA's written policy and procedures.

(d) The PHA/IHA may reject any and all bids, accept other than the lowest bid (e.g., the apparent low bid is unreasonably low), and waive informalities or minor irregularities in bids received, in accordance with the PHA's/IHA's written policy and procedures.

(e) Unless precluded elsewhere in the solicitation, the PHA/IHA may accept any item or combination of items bid.

(f) The PHA/IHA may reject any bid as nonresponsive if it is materially unbalanced as to the prices for the various items of work to be performed. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(g) A written award shall be furnished to the successful bidder within the period for acceptance specified in the bid and shall result in a binding contract without further action by either party.

9. Bid Guarantee (applicable to construction and equipment contracts exceeding \$25,000)

All bids must be accompanied by a negotiable bid guarantee which shall not be less than five percent (5%) of the amount of the bid. The bid guarantee may be a certified check, bank draft, U.S. Government Bonds at par value, or a bid bond secured by a surety company acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. In the case where the work under the contract will be performed on an Indian reservation area, the bid guarantee may also be an irrevocable Letter of Credit (see provision 10, Assurance of Completion, below). Certified checks and bank drafts must be made payable to the order of the PHA/IHA. The bid guarantee shall insure the execution of the contract and the furnishing of a method of assurance of completion by the successful bidder as required by the solicitation. Failure to submit a bid guarantee with the bid shall result in the rejection of the bid. Bid guarantees submitted by unsuccessful bidders will be returned as soon as practicable after bid opening.

10. Assurance of Completion

(a) Unless otherwise provided in State law, the successful bidder shall furnish an assurance of completion prior to the execution of any contract under this solicitation. This assurance may be [Contracting Officer check applicable items] —

[] (1) a performance and payment bond in a penal sum of 100 percent of the contract price; or, as may be required or permitted by State law;

[] (2) separate performance and payment bonds, each for 50 percent or more of the contract price;

[] (3) a 20 percent cash escrow;

[] (4) a 25 percent irrevocable letter of credit; or,

[] (5) an irrevocable letter of credit for 10 percent of the total contract price with a monitoring and disbursements agreement with the IHA (applicable only to contracts awarded by an IHA under the Indian Housing Program).

(b) Bonds must be obtained from guarantee or surety companies acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. Individual sureties will not be considered. U.S. Treasury Circular Number 570, published annually in the Federal Register, lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies listed in this circular is mandatory. Copies of the circular may be downloaded on the U.S. Department of Treasury website <http://www.fms.treas.gov/c570/index.html>, or ordered for a minimum fee by contacting the Government Printing Office at (202) 512-2168.

(c) Each bond shall clearly state the rate of premium and the total amount of premium charged. The current power of attorney for the person who signs for the surety company must be attached to the bond. The effective date of the power of attorney shall not precede the date of the bond. The effective date of the bond shall be on or after the execution date of the contract.

(d) Failure by the successful bidder to obtain the required assurance of completion within the time specified, or within such extended period as the PHA/IHA may grant based upon reasons determined adequate by the PHA/IHA, shall render the bidder ineligible for award. The PHA/IHA may then either award the contract to the next lowest responsible bidder or solicit new bids. The PHA/IHA may retain the ineligible bidder's bid guarantee.

11. Preconstruction Conference (applicable to construction contracts)

After award of a contract under this solicitation and prior to the start of work, the successful bidder will be required to attend a preconstruction conference with representatives of the PHA/IHA and its architect/engineer, and other interested parties convened by the PHA/IHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract (e.g., Equal Employment Opportunity, Labor Standards). The PHA/IHA will provide the successful bidder with the date, time, and place of the conference.

12. Indian Preference Requirements (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

(a) HUD has determined that the contract awarded under this solicitation is subject to the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) requires that any contract or subcontract entered into for the benefit of Indians shall require that, to the greatest extent feasible

(1) Preferences and opportunities for training and employment (other than core crew positions; see paragraph (h) below) in connection with the administration of such contracts or subcontracts be given to qualified "Indians." The Act defines "Indians" to mean persons who are members of an Indian tribe and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and,

(2) Preference in the award of contracts or subcontracts in connection with the administration of contracts be given to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452). That Act defines "economic enterprise" to mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that the Indian ownership must constitute not less than 51 percent of the enterprise; "Indian organization" to mean the governing body of any Indian tribe or entity established or recognized by such governing body; "Indian" to mean any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act; and Indian "tribe" to mean any Indian tribe, band, group, pueblo, or community including Native villages and Native groups (including

corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

(b) (1) The successful Contractor under this solicitation shall comply with the requirements of this provision in awarding all subcontracts under the contract and in providing training and employment opportunities.

(2) A finding by the IHA that the contractor, either (i) awarded a subcontract without using the procedure required by the IHA, (ii) falsely represented that subcontracts would be awarded to Indian enterprises or organizations; or, (iii) failed to comply with the contractor's employment and training preference bid statement shall be grounds for termination of the contract or for the assessment of penalties or other remedies.

(c) If specified elsewhere in this solicitation, the IHA may restrict the solicitation to qualified Indian-owned enterprises and Indian organizations. If two or more (or a greater number as specified elsewhere in the solicitation) qualified Indian-owned enterprises or organizations submit responsive bids, award shall be made to the qualified enterprise or organization with the lowest responsive bid. If fewer than the minimum required number of qualified Indian-owned enterprises or organizations submit responsive bids, the IHA shall reject all bids and readvertise the solicitation in accordance with paragraph (d) below.

(d) If the IHA prefers not to restrict the solicitation as described in paragraph (c) above, or if after having restricted a solicitation an insufficient number of qualified Indian enterprises or organizations submit bids, the IHA may advertise for bids from non-Indian as well as Indian-owned enterprises and Indian organizations. Award shall be made to the qualified Indian enterprise or organization with the lowest responsive bid if that bid is -

(1) Within the maximum HUD-approved budget amount established for the specific project or activity for which bids are being solicited; and

(2) No more than the percentage specified in 24 CFR 905.175(c) higher than the total bid price of the lowest responsive bid from any qualified bidder. If no responsive bid by a qualified Indian-owned economic enterprise or organization is within the stated range of the total bid price of the lowest responsive bid from any qualified enterprise, award shall be made to the bidder with the lowest bid.

(e) Bidders seeking to qualify for preference in contracting or subcontracting shall submit proof of Indian ownership with their bids. Proof of Indian ownership shall include but not be limited to:

(1) Certification by a tribe or other evidence that the bidder is an Indian. The IHA shall accept the certification of a tribe that an individual is a member.

(2) Evidence such as stock ownership, structure, management, control, financing and salary or profit sharing arrangements of the enterprise.

(f) (1) All bidders must submit with their bids a statement describing how they will provide Indian preference in the award of subcontracts. The specific requirements of that statement and the factors to be used by the IHA in determining the statement's adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement shall be rejected as nonresponsive. The IHA may require that comparable statements be provided by subcontractors to the successful Contractor, and may require the Contractor to reject any bid or proposal by a subcontractor that fails to include the statement.

(2) Bidders and prospective subcontractors shall submit a certification (supported by credible evidence) to the IHA in any instance where the bidder or subcontractor believes it is infeasible to provide Indian preference in subcontracting. The acceptance or rejection by the IHA of the certification shall be final. Rejection shall disqualify the bid from further consideration.

(g) All bidders must submit with their bids a statement detailing their employment and training opportunities and their plans to provide preference to Indians in implementing the contract; and the number or percentage of Indians anticipated to be employed and trained. Comparable statements from all proposed subcontractors must be submitted. The criteria to be used by the IHA in determining the statement(s)'s adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement(s), or that includes a statement that does not meet minimum standards required by the IHA shall be rejected as nonresponsive.

(h) Core crew employees. A core crew employee is an individual who is a bona fide employee of the contractor at the time the bid is submitted; or an individual who was not employed by the bidder at the time the bid was submitted, but who is regularly employed by the bidder in a supervisory or other key skilled position when work is available. Bidders shall submit with their bids a list of all core crew employees.

(i) Preference in contracting, subcontracting, employment, and training shall apply not only on-site, on the reservation, or within the IHA's jurisdiction, but also to contracts with firms that operate outside these areas (e.g., employment in modular or manufactured housing construction facilities).

(j) Bidders should contact the IHA to determine if any additional local preference requirements are applicable to this solicitation.

(k) The IHA [] does [] does not [Contracting Officer check applicable box] maintain lists of Indian-owned economic enterprises and Indian organizations by specialty (e.g., plumbing, electrical, foundations), which are available to bidders to assist them in meeting their responsibility to provide preference in connection with the administration of contracts and subcontracts.

General Conditions for Construction Contracts - Public Housing Programs

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
OMB Approval No. 2577-0157 (exp. 1/31/2017)

Applicability. This form is applicable to any construction/development contract greater than \$100,000.

This form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 24 CFR 85.36, and those requirements set forth in Section 3 of the Housing and Urban Development Act of 1968 and its amendment by the Housing and Community Development Act of 1992, implemented by HUD at 24 CFR Part 135. The form is required for construction contracts awarded by Public Housing Agencies (PHAs).

The form is used by Housing Authorities in solicitations to provide necessary contract clauses. If the form were not used, HAs would be unable to enforce their contracts.

Public reporting burden for this collection of information is estimated to average 1.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Responses to the collection of information are required to obtain a benefit or to retain a benefit.

The information requested does not lend itself to confidentiality.

HUD may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB number.

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1. Definitions

- (a) "Architect" means the person or other entity engaged by the PHA to perform architectural, engineering, design, and other services related to the work as provided for in the contract. When a PHA uses an engineer to act in this capacity, the terms "architect" and "engineer" shall be synonymous. The Architect shall serve as a technical representative of the Contracting Officer. The Architect's authority is as set forth elsewhere in this contract.
 - (b) "Contract" means the contract entered into between the PHA and the Contractor. It includes the forms of Bid, the Bid Bond, the Performance and Payment Bond or Bonds or other assurance of completion, the Certifications, Representations, and Other Statements of Bidders (form HUD-5370), these General Conditions of the Contract for Construction (form HUD-5370), the applicable wage rate determinations from the U.S. Department of Labor, any special conditions included elsewhere in the contract, the specifications, and drawings. It includes all formal changes to any of those documents by addendum, change order, or other modification.
 - (c) "Contracting Officer" means the person delegated the authority by the PHA to enter into, administer, and/or terminate this contract and designated as such in writing to the Contractor. The term includes any successor Contracting Officer and any duly authorized representative of the Contracting Officer also designated in writing. The Contracting Officer shall be deemed the authorized agent of the PHA in all dealings with the Contractor.
 - (d) "Contractor" means the person or other entity entering into the contract with the PHA to perform all of the work required under the contract.
 - (e) "Drawings" means the drawings enumerated in the schedule of drawings contained in the Specifications and as described in the contract clause entitled Specifications and Drawings for Construction herein.
 - (f) "HUD" means the United States of America acting through the Department of Housing and Urban Development including the Secretary, or any other person designated to act on its behalf. HUD has agreed, subject to the provisions of an Annual Contributions Contract (ACC), to provide financial assistance to the PHA, which includes assistance in financing the work to be performed under this contract. As defined elsewhere in these General Conditions or the contract documents, the determination of HUD may be required to authorize changes in the work or for release of funds to the PHA for payment to the Contractor. Notwithstanding HUD's role, nothing in this contract shall be construed to create any contractual relationship between the Contractor and HUD.
 - (g) "Project" means the entire project, whether construction or rehabilitation, the work for which is provided for in whole or in part under this contract.
 - (h) "PHA" means the Public Housing Agency organized under applicable state laws which is a party to this contract.
 - (j) "Specifications" means the written description of the technical requirements for construction and includes the criteria and tests for determining whether the requirements are met.
 - (l) "Work" means materials, workmanship, and manufacture and fabrication of components.
- (a) The Contractor shall furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the work. The Contractor shall also furnish all necessary water, heat, light, and power not made available to the Contractor by the PHA pursuant to the clause entitled Availability and Use of Utility Services herein.
 - (b) The Contractor shall perform on the site, and with its own organization, work equivalent to at least [] (12 percent unless otherwise indicated) of the total amount of work to be performed under the order. This percentage may be reduced by a supplemental agreement to this order if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the PHA.
 - (c) At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.
 - (d) The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall hold and save the PHA, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.
 - (e) The Contractor shall lay out the work from base lines and bench marks indicated on the drawings and be responsible for all lines, levels, and measurements of all work executed under the contract. The Contractor shall verify the figures before laying out the work and will be held responsible for any error resulting from its failure to do so.
 - (f) The Contractor shall confine all operations (including storage of materials) on PHA premises to areas authorized or approved by the Contracting Officer.
 - (g) The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. After completing the work and before final inspection, the Contractor shall (1) remove from the premises all scaffolding, equipment, tools, and materials (including rejected materials) that are not the property of the PHA and all rubbish caused by its work; (2) leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer; (3) perform all specified tests; and, (4) deliver the installation in complete and operating condition.
 - (h) The Contractor's responsibility will terminate when all work has been completed, the final inspection made, and the work accepted by the Contracting Officer. The Contractor will then be released from further obligation except as required by the warranties specified elsewhere in the contract.

3. Architect's Duties, Responsibilities, and Authority

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

2. Contractor's Responsibility for Work

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

4. Other Contracts

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

Construction Requirements

5. Pre-construction Conference and Notice to Proceed

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

6. Construction Progress Schedule

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

7. Site Investigation and Conditions Affecting the Work

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

- reasonably ascertainable from an inspection of the site, including all exploratory work done by the PHA, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the PHA.
- (b) The PHA assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the PHA. Nor does the PHA assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

8. Differing Site Conditions

- (a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site(s), of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.
- (b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. Work shall not proceed at the affected site, except at the Contractor's risk, until the Contracting Officer has provided written instructions to the Contractor. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, the Contractor shall file a claim in writing to the PHA within ten days after receipt of such instructions and, in any event, before proceeding with the work. An equitable adjustment in the contract price, the delivery schedule, or both shall be made under this clause and the contract modified in writing accordingly.
- (c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.
- (d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.
- (b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by", or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.
- (c) Where "as shown", "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place" that is "furnished and installed".
- (d) "Shop drawings" means drawings, submitted to the PHA by the Contractor, subcontractor, or any lower tier subcontractor, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The PHA may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.
- (e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with other contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the PHA's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.
- (f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Architect approves any such variation and the Contracting Officer concurs, the Contracting Officer shall issue an appropriate modification to the contract, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.
- (g) It shall be the responsibility of the Contractor to make timely requests of the PHA for such large scale and full size drawings, color schemes, and other additional information, not already in his possession, which shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

9. Specifications and Drawings for Construction

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

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

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

10. As-Built Drawings

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

11. Material and Workmanship

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

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

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

12. Permits and Codes

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

waivers. Before installing the work, the Contractor shall examine the drawings and the specifications for compliance with applicable codes and regulations bearing on the work and shall immediately report any discrepancy it may discover to the Contracting Officer. Where the requirements of the drawings and specifications fail to comply with the applicable code or regulation, the Contracting Officer shall modify the contract by change order pursuant to the clause entitled Changes herein to conform to the code or regulation.

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

13. Health, Safety, and Accident Prevention

- (a) In performing this contract, the Contractor shall:
- (1) Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation;
 - (2) Protect the lives, health, and safety of other persons;
 - (3) Prevent damage to property, materials, supplies, and equipment; and,
 - (4) Avoid work interruptions.
- (b) For these purposes, the Contractor shall:
- (1) Comply with regulations and standards issued by the Secretary of Labor at 29 CFR Part 1926. Failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96), 40 U.S.C. 3701 et seq.; and
 - (2) Include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.
- (c) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 CFR Part 1904.
- (d) The Contracting Officer shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.
- (e) The Contractor shall be responsible for its subcontractors' compliance with the provisions of this clause. The Contractor shall take such action with respect to any subcontract as the PHA, the Secretary of Housing and Urban Development, or the Secretary of Labor shall direct as a means of enforcing such provisions.

14. Temporary Heating

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

15. Availability and Use of Utility Services

- (a) The PHA shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the PHA or, where the utility is produced by the PHA, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.
- (b) The Contractor, at its expense and in a manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the PHA, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

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

- (a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed under this contract, and which do not unreasonably interfere with the work required under this contract.
- (b) The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance of this contract, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.
- (c) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. Prior to disturbing the ground at the construction site, the Contractor shall ensure that all underground utility lines are clearly marked.
- (d) The Contractor shall shore up, brace, underpin, secure, and protect as necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected by the excavations or other operations connected with the construction of the project.
- (e) Any equipment temporarily removed as a result of work under this contract shall be protected, cleaned, and replaced in the same condition as at the time of award of this contract.

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

17. Temporary Buildings and Transportation of Materials

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

18. Clean Air and Water

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

19. Energy Efficiency

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

20. Inspection and Acceptance of Construction

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

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

21. Use and Possession Prior to Completion

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

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

22. Warranty of Title

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

23. Warranty of Construction

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

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

24. Prohibition Against Liens

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

Administrative Requirements

25. Contract Period

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

26. Order of Provisions

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

27. Payments

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

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

- (d) The Contractor shall submit, on forms provided by the PHA, periodic estimates showing the value of the work performed during each period based upon the approved submitted not later than _____ days in advance of the date set for payment and are subject to correction and revision as required. The estimates must be approved by the Contracting Officer with the concurrence of the Architect prior to payment. If the contract covers more than one project, the Contractor shall furnish a separate progress payment estimate for each.
- (e) Along with each request for progress payments and the required estimates, the Contractor shall furnish the following certification, or payment shall not be made: I hereby certify, to the best of my knowledge and belief, that:
 - (1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;
 - (2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements; and,
 - (3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

Name:

Title:

Date:

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

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

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

28. Contract Modifications

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

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

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

29. Changes

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

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

30. Suspension of Work

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

been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or for which any equitable adjustment is provided for or excluded under any other provision of this contract.

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

31. Disputes

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

32. Default

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

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

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

33. Liquidated Damages

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

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

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

34. Termination for Convenience

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

35. Assignment of Contract

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

36. Insurance

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

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

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

37. Subcontracts

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

(2) "Subcontractor" means any supplier, vendor, or firm that furnishes supplies, materials, equipment, or services to or for the Contractor or another subcontractor.

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

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

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

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

39. Equal Employment Opportunity

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

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or handicap.
- (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, national origin, or handicap. 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, national origin, or handicap.
- (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, Section 503 of the Rehabilitation Act of 1973, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor 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 subcontract 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.
- (j) Compliance with the requirements of this clause shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act and the Indian Preference clause of this contract.
- 40. Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.**
- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- (g) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

41. Interest of Members of Congress

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

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

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

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

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

44. Royalties and Patents

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

45. Examination and Retention of Contractor's Records

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

46. Labor Standards - Davis-Bacon and Related Acts

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

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

be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

- (2) (i) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1214-0149.)
- (ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (A) That the payroll for the payroll period contains the information required to be maintained under paragraph (c) (1) of this clause and that such information is correct and complete;
- (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and
- (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by subparagraph (c)(2)(ii) of this clause.
- (iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (3) The Contractor or subcontractor shall make the records required under subparagraph (c)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to

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

- (d) (1) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (2) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under

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

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

- (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a United States Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (3) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.
- (j) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.
- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
 - (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in subparagraph (j)(1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic (including watchmen and guards) employed in violation of the provisions set forth in subparagraph (j)(1) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in subparagraph (j)(1) of this clause.
 - (3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in subparagraph (j)(2) of this clause.
- (k) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause, and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.

47. Non-Federal Prevailing Wage Rates

- (a) Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under State or tribal law to be prevailing, with respect to any employee in any trade or position employed under the contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate exceeds:
 - (1) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141 et seq.) to be prevailing in the locality with respect to such trade;
- (b) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor (DOL) or a DOL-recognized State Apprenticeship Agency; or
- (c) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

48. Procurement of Recovered Materials.

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
- (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.

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

**Representations, Certifications,
and Other Statements of Bidders**
Public and Indian Housing Programs

Representations, Certifications, and Other Statements of Bidders

Public and Indian Housing Programs

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1. Certificate of Independent Price Determination

(a) The bidder certifies that--

(1) The prices in this bid have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to (i) those prices, (ii) the intention to submit a bid, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this bid have not been and will not be knowingly disclosed by the bidder, directly or indirectly, to any other bidder or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a competitive proposal solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the bidder to induce any other concern to submit or not to submit a bid for the purpose of restricting competition.

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

(1) Is the person in the bidder's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

_____ [insert full name of person(s) in the bidder's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

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

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

[] [Contracting Officer check if following paragraph is applicable]

(d) Non-collusive affidavit. (applicable to contracts for construction and equipment exceeding \$50,000)

(1) Each bidder shall execute, in the form provided by the PHA/IHA, an affidavit to the effect that he/she has not colluded with any other person, firm or corporation in regard to any bid submitted in response to this solicitation. If the successful bidder did not submit the affidavit with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the affidavit by that date may render the bid nonresponsive. No contract award will be made without a properly executed affidavit.

(2) A fully executed "Non-collusive Affidavit" [] is, [] is not included with the bid.

2. Contingent Fee Representation and Agreement

(a) Definitions. As used in this provision:

"Bona fide employee" means a person, employed by a bidder and subject to the bidder's supervision and control as to time, place, and manner of performance, who neither exerts, nor proposes to exert improper influence to solicit or obtain contracts nor holds out as being able to obtain any contract(s) through improper influence.

"Improper influence" means any influence that induces or tends to induce a PHA/IHA employee or officer to give consideration or to act regarding a PHA/IHA contract on any basis other than the merits of the matter.

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

(1) [] has, [] has not employed or retained any person or company to solicit or obtain this contract; and

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

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

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

3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (applicable to contracts exceeding \$100,000)

(a) The definitions and prohibitions contained in Section 1352 of title 31, United States Code, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The bidder, by signing its bid, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989 that:

(1) No 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 on his or her behalf in connection with the awarding of a contract resulting from this solicitation;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the bidder shall complete and submit, with its bid, OMB standard form LLL, "Disclosure of Lobbying Activities;" and

(3) He or she will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(d) Indian tribes (except those chartered by States) and Indian organizations as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) are exempt from the requirements of this provision.

4. Organizational Conflicts of Interest Certification

The bidder certifies that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work to be performed under this proposed contract and the bidder's organizational, financial, contractual, or other interests may, without some restriction on future activities:

- (a) Result in an unfair competitive advantage to the bidder; or,
- (b) Impair the bidder's objectivity in performing the contract work.

[] In the absence of any actual or apparent conflict, I hereby certify that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement.

5. Bidder's Certification of Eligibility

(a) By the submission of this bid, the bidder certifies that to the best of its knowledge and belief, neither it, nor any person or firm which has an interest in the bidder's firm, nor any of the bidder's subcontractors, is ineligible to:

(1) Be awarded contracts by any agency of the United States Government, HUD, or the State in which this contract is to be performed; or,

(2) Participate in HUD programs pursuant to 24 CFR Part 24.

(b) The certification in paragraph (a) above is a material representation of fact upon which reliance was placed when making award. If it is later determined that the bidder knowingly rendered an erroneous certification, the contract may be terminated for default, and the bidder may be debarred or suspended from participation in HUD programs and other Federal contract programs.

6. Minimum Bid Acceptance Period

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the PHA/IHA for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The PHA/IHA requires a minimum acceptance period of [Contracting Officer insert time period] calendar days.

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the PHA's/IHA's minimum requirement. The bidder allows the following acceptance period: calendar days.

(e) A bid allowing less than the PHA's/IHA's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above or (2) any longer acceptance period stated in paragraph (d) above.

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

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

(a) [] is, [] is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) [] is, [] is not a women-owned business enterprise. "Women-owned business enterprise," as used in this provision, means a business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

(c) [] is, [] is not a minority business enterprise. "Minority business enterprise," as used in this provision, means a business which is at least 51 percent owned or controlled by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are:

(Check the block applicable to you)

- | | |
|------------------------|------------------------------|
| [] Black Americans | [] Asian Pacific Americans |
| [] Hispanic Americans | [] Asian Indian Americans |
| [] Native Americans | [] Hasidic Jewish Americans |

8. Indian-Owned Economic Enterprise and Indian Organization Representation (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

The bidder represents and certifies that it:

(a) [] is, [] is not an Indian-owned economic enterprise. "Economic enterprise," as used in this provision, means any commercial, industrial, or business activity established or organized for the purpose of profit, which is at least 51 percent Indian owned. "Indian," as used in this provision, means any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act.

(b) [] is, [] is not an Indian organization. "Indian organization," as used in this provision, means the governing body of any Indian tribe or entity established or recognized by such governing body. Indian "tribe" means any Indian tribe, band, group, pueblo, or

community including Native villages and Native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

9. Certification of Eligibility Under the Davis-Bacon Act (applicable to construction contracts exceeding \$2,000)

(a) By the submission of this bid, the bidder certifies that neither it nor any person or firm who has an interest in the bidder's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of the contract resulting from this solicitation shall be subcontracted to any person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.

10. Certification of Nonsegregated Facilities (applicable to contracts exceeding \$10,000)

(a) The bidder's attention is called to the clause entitled **Equal Employment Opportunity** of the General Conditions of the Contract for Construction.

(b) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

(c) By the submission of this bid, the bidder certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The bidder agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in the contract.

(d) The bidder further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) prior to entering into subcontracts which exceed \$10,000 and are not exempt from the requirements of the Equal Employment Opportunity clause, it will:

- (1) Obtain identical certifications from the proposed subcontractors;
- (2) Retain the certifications in its files; and
- (3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause of the prime contract. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

Note: The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

11. Clean Air and Water Certification (applicable to contracts exceeding \$100,000)

The bidder certifies that:

(a) Any facility to be used in the performance of this contract [] is, [] is not listed on the Environmental Protection Agency List of Violating Facilities:

(b) The bidder will immediately notify the PHA/IHA Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the bidder proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and,

(c) The bidder will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

12. Previous Participation Certificate (applicable to construction and equipment contracts exceeding \$50,000)

(a) The bidder shall complete and submit with his/her bid the Form HUD-2530, "Previous Participation Certificate." If the successful bidder does not submit the certificate with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the certificate by that date may render the bid nonresponsive. No contract award will be made without a properly executed certificate.

(b) A fully executed "Previous Participation Certificate" [] is, [] is not included with the bid.

13. Bidder's Signature

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

(Signature and Date)

(Typed or Printed Name)

(Title)

(Company Name)

(Company Address)

NON-COLLUSIVE DECLARATION

The undersigned declares:

I am the _____ of _____, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company association, organization, bid depository, or to any member of agent thereof to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that her or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date], at _____ [city], _____ [state].

(Individual Signature)

(Partner Signature)

(Officer of Corporation Signature)

Subscribed and sworn to before me this _____ day of _____, 20__

My commission expires: _____

CONSENT TO PUBLIC DISCLOSURE BY CONTRACTOR

By providing the "Personal Information", (if any) as defined in Section 1798.3(a) of the Civil Code of the State of California (to the extent that it is applicable, if at all), requested herein and by seeking a loan from, a grant from, a contract with, the sale of real estate to, the right to develop from, and/or any and all other entitlements from the San Diego Housing Commission ("COMMISSION"), the HOUSING AUTHORITY OF THE CITY OF SAN DIEGO ("AUTHORITY") and/or the CITY OF SAN DIEGO ("CITY"), the CONTRACTOR consents to the disclosure of any and all "Personal Information" and of any and all other information contained in this Public Disclosure Statement. CONTRACTOR specifically, knowingly and intentionally waives any and all privileges and rights that may exist under State and/or Federal Law relating to the public disclosure of the information contained herein. With respect to "Personal Information", if any, contained herein, the CONTRACTOR, by executing this disclosure statement and providing the information requested, consents to its disclosure pursuant to the provisions of the Information Practices Act of 1977, Civil Code Section 1798.24(b). CONTRACTOR is aware that a disclosure of information contained herein will be made at a public meeting, the Commission, the AUTHORITY, and/or the CITY at such times as the meetings may be scheduled. CONTRACTOR hereby consents to the disclosure of said "Personal Information", if any, more than thirty (30) days from the date of this statement at the duly scheduled meeting(s) of the Commission, the AUTHORITY and/or the CITY. CONTRACTOR acknowledges that public disclosure of the information contained herein may be made pursuant to the provisions of Civil Code Section 1798.24(d).

CONTRACTOR represents and warrants to the Commission, the AUTHORITY and the CITY that by providing the information requested herein and waiving any and all privileges available under the Evidence Code of the State of California, State and Federal Law, (to the extent of this disclosure that the information being submitted herein), the information constitutes a "Public Record" subject to disclosure to members of the public in accordance with the provisions of California Government Section 6250 et seq.

CONTRACTOR specifically waives, by the production of the information disclosed herein, any and all rights that CONTRACTOR may have with respect to the information under the provisions of Government Code Section 6254 including its applicable subparagraphs, to the extent of the disclosure herein, as well as all rights of privacy, if any, under the State and Federal Law.

Executed this _____ day of _____, 201____, at San Diego, California.

CONTRACTOR

By: _____
Signature

(Print name)

Title

STIPULATION OF LIEN

KNOW ALL MEN BY THESE PRESENTS:

1. The undersigned certifies that all work required under this contract will be performed in accordance with the terms thereof, and that there will be no unpaid claims for materials, supplies or equipment and no claims of laborers or mechanics for unpaid wages arising out of the performance of this contract.
2. That, in consideration of the payment of the amount of this contract, the undersigned does hereby release the San Diego Housing Commission from any and all claims arising under or by virtue of this contract, provided, however that if for any reason the San Diego Housing Commission does not pay in full the amount stated, said deduction shall not affect the validity of this release.

IN WITNESS WHEREOF, the undersigned has signed and sealed this instrument this

_____ day of _____ 201__.

BY: _____

Title: _____

NAME AND ADDRESS OF CONTRACTOR:

Guarantee Form

The Contractor shall provide the following Guarantee on his own letterhead for all materials and labor:

“GUARANTEE FOR _____”

We hereby guarantee that the _____ which we have installed in the housing rehabilitation project for the San Diego Housing Commission has been done in accordance with the contract specifications and that the work as installed will fulfill the requirements of the guarantee included in the specifications. We agree to repair or replace any or all of our work, including without limitation any or all work of our subcontractors, together with any other adjacent work which may be displaced by so doing, that may prove to be defective in its workmanship or materials, within a period of **one (1) year** from the date of acceptance of the above-named project by the Commission, wear and tear and usual abuse or neglect excepted. In the event of our failure to comply with the above-mentioned conditions within forty-eight (48) hours, for non emergency matters, after being notified in writing by the Commission, we, collectively or separately, do hereby authorize the Commission to proceed to have said defects repaired and made good at our expense and we will honor and pay the costs and charges therefore upon demand (defined as within five (5) days of the receipt of invoice(s) from the Commission). Nothing contained herein shall limit the right of the Commission to make emergency repairs as referenced in the Special Conditions within one (1) hour of oral notice to the Contractor, if Contractor has not responded within said one (1) hour period.

In the event that the Commission makes any emergency repairs and/or abatement of emergency conditions, as permitted under the terms of the Special Conditions, Contractor understands, acknowledges and agrees that all costs of abatement and/or repair incurred by the Commission shall be paid by the Contractor to the Commission and/or the vendor(s) chosen by the Commission to do the work of abatement and/or repair, within five (5) days of the date of the presentment of invoice(s) concerning the same. Contractor, by execution of this Guarantee, further agrees that in addition to the foregoing that Contractor will, within forty-eight (48) hours of the notice from the Commission, whether, written or oral, of the emergency, make any and all additional and further repairs, corrections and/or replacements of equipment, material, supplies, appliances and/or improvements, of all types and kinds, and shall further perform any and all other work necessary to complete the repair of the emergency condition and/or necessary to abate such condition, including repair and replacement to adjacent work, if any, disturbed and/or damaged by the emergency repairs and/or abatement, at the further sole cost and expense of the Contractor. All work performed by the Contractor under the terms of this Guarantee shall be done to the satisfaction of the Commission and shall be performed in a defect free manner.

Signed (Contractor): _____ Date: _____

CALIFORNIA GNATCATCHER CERTIFICATION

On March 25, 1993, the California Gnatcatcher was listed by the U. S. Secretary of the Interior as "threatened" under the Federal Endangered Species Act. This list is effective immediately.

Until an interim conservation plan is approved by the U. S. Fish and Wildlife Service and the California Department of Fish and Game, no "take" (harm, disturbance) of the species or its coastal sage scrub habitat is permitted.

This is to certify that _____
(Name of Contractor)

shall not violate this prohibition in connection with the work of this contract.

(Contractor)

By: _____

Title: _____

Date: _____

Name of Firm _____

Payroll Ending Date _____

WORK FORCE REPORT OF SAN DIEGO COUNTY

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black, African-American
- (2) Latino, Hispanic, Mexican-American, Puerto Rican
- (3) Asian, Pacific Islander
- (4) American Indian, Eskimo
- (5) Caucasian
- (6) Other ethnicity; not falling into other groups

OCCUPATIONAL CATEGORY	(1) Black		(2) Latino		(3) Asian Pacific Islander		(4) American Indian		(5) Caucasian		(6) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Executive, Administrative, Managerial												
Professional Specialty												
Engineers/Architects												
Technicians and Related Support												
Sales												
Administrative Support/Clerical												
Services												
Precision Production, Craft and Repair												
Machine Operators, Assemblers, Inspectors												
Transportation and Material Moving												
Handlers, Equipment Cleaners, Helpers and Non-construction Laborers*												
TOTAL EACH COLUMN												
Disabled (by Gender & Ethnicity)												

GRAND TOTAL ALL EMPLOYEES

--

NON PROFIT AGENCIES ONLY

President												
Vice President												
Secretary												
Treasurer												
TOTAL EACH COLUMN												

Indicate the gender and minority composition of the board as required above. Please substitute titles of officers or board members as necessary.

OCCUPATIONAL CATEGORY LIST

Executive, Administrative and Management

Executive, Administrative Management
Related

Professional Specialty

Engineers, Architects, Surveyors
Mathematical and Computer Scientists
Health Diagnosing
Health Assessment and Treating
Teachers, Postsecondary
Teachers, Except Postsecondary
Counselors, Educational and Vocational
Librarians, Archivists, Curators
Social Scientists and Urban Planners
Social, Recreation and Religious Workers
Lawyers and Judges

Technicians and Related Support

Health Technologists and Technicians
Engineering and Related Technologists and
Technicians
Technicians, Except Health, Engineering and
Service

Sales

Supervisors and Proprietors
Sales Representatives, Finance and Business
Services
Sales Representatives, Commodities Except Retail
Sales Workers, Retail and Personal Services

Administrative Support

Supervisors, Administrative Support
Computer Equipment Operators
Secretaries, Stenographers, Typists
Information Clerks
Records, Processing Except Financial
Financial Records Processing
Duplicating and Other Office Machine Operators
Communications Equipment Operators
Mail and Message Distributing
Material Recording and Distributing Clerks
Adjusters and Investigators
Other Administrative Support

Precision Production, Craft and Repair

Supervisors, Mechanics and Repairers
Vehicle and Mobile Equipment Mechanics and
Industrial Machinery Repairer
Machinery Maintenance
Electrical and Electronic Equipment

Repairers
Heating, Air Conditioning, Refrigeration
Mechanics
Other Mechanics and Repairers
Supervisors Construction
Construction Trades, Except Supervisors
Extractive Occupations
Precision Production Occupations

Machine Operators, Assemblers and Inspectors

Metalworking and Plastic Working Machine
Operator
Metal and Plastic Processing Machine
Operators
Woodworking Machine Operators
Printing Machine Operators
Textile, Apparel and Furnishing Machine
Operators
Machine Operators, Assorted Materials
Fabricators, Assembler & Hand Working
Occupations

Transportation and Material Moving

Motor Vehicle Operators
Rail Transportation Occupations
Water Transportation Occupations
Material Moving Equipment Operators

Handler, Equipment Cleaners, Helpers and Laborers

Handlers
Equipment Cleaners
Helpers
Laborers

Services

Private Households
Protective Services
Supervisors, Protective Services
Firefighting and Fire Prevention
Police and Detectives
Guards
Supervisors, Food Preparation and Services
Health Services
Cleaning and Building Services
Personal Services

NAME OF COMPANY: _____ TELEPHONE: _____

ADDRESS: _____

CITY STATE ZIP

PREPARED BY: _____ DATE: _____

(CONSTRUCTION ONLY)

WORK FORCE REPORT – Page 3

NAME OF FIRM: _____ DATE: _____

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part- time basis. The following groups are to be included in ethnic categories listed in columns below:

- | | |
|--|--|
| (1) Black, African-American | (5) Filipino |
| (2) Hispanic, Latino, Mexican-American, Puerto Rican | (6) White, Caucasian |
| (3) Asian, Pacific Islander | (7) Other ethnicity; not falling into other groups |
| (4) American Indian, Eskimo | |

TRADE OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicity	
	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)
	Brick, Block or Stone Masons													
Carpenters														
Carpet, Floor & Tile Installers Finishers														
Cement Masons, Concrete Finishers														
Construction Laborers														
Drywall Installers, Ceiling Tile Installers														
Electricians														
Elevator Installers														
First-Line Supervisors/Managers														
Glaziers														
Helpers; Construction Trade														
Millwrights														
Misc. Const. Equipment Operators														
Painters, Const. & Maintenance														
Pipelayers, Plumbers, Pipe & Steam Fitters														
Plasterers & Stucco Masons														
Roofers														
Security Guards & Surveillance Officers														
Sheet Metal Workers														
Structural Metal Fabricators & Fitters														
Welding, Soldering & Brazing Workers														
Workers, Extractive Crafts, Miners														
TOTAL EACH COLUMN														
GRAND TOTAL ALL EMPLOYEES														
Disabled (by Gender & Ethnicity)														

(CONSTRUCTION ONLY)

Exhibit B: Work Force Report Job categories-Trade

Brick, Block or Stone Masons

Brickmasons and Blockmasons
Stonemasons

Carpenters

Carpet, floor and Tile Installers and Finishers

Carpet Installers
Floor Layers, except Carpet, Wood and Hard Tiles
Floor Sanders and Finishers
Tile and Marble Setters

Cement Masons, Concrete Finishers

Cement Masons and Concrete Finishers
Terrazzo Workers and Finishers

Construction Laborers

Drywall Installers, Ceiling Tile Installers

Drywall and Ceiling Tile Installers
Tapers

Electricians

Elevator Installers and Repairers

First-Line Supervisors/Managers

First-line Supervisors/Managers of Construction Trades and Extraction Workers

Glaziers

Helpers, Construction Trade

Brickmasons, Blockmasons, and Tile and Marble Setters
Carpenters
Electricians
Painters, Paperhangers, Plasterers and Stucco
Pipelayers, Plumbers, Pipefitters and Steamfitters
Roofers
All other Construction Trades

Millwrights

Heating, Air Conditioning and Refrigeration Mechanics and Installers
Mechanical Door Repairers
Control and Valve Installers and Repairers
Other Installation, Maintenance and Repair Occupations

Misc. Const. Equipment Operators

Paving, Surfacing and Tamping Equipment Operators
Pile-Driver Operators
Operating Engineers and Other Construction Equipment Operators

Painters, Const. Maintenance

Painters, Construction and Maintenance
Paperhangers

Pipelayers and Plumbers

Pipelayers
Plumbers, Pipefitters and Steamfitters

Plasterers and Stucco Masons

Roofers

Security Guards & Surveillance Officers

Sheet Metal Workers

Structural Iron and Steel Workers

Welding, Soldering and Brazing Workers

Welders, Cutter, Solderers and Brazers
Welding, Soldering and Brazing Machine Setter, Operators and Tenders

Workers, Extractive Crafts, Miners

EQUAL OPPORTUNITY REQUIREMENTS

Name of Proposer _____

Contact Person _____

REQUIREMENTS

EQUAL EMPLOYMENT OPPORTUNITY:

- Proposer is required to submit a Work Force Report of San Diego County and a signed Equal Employment Opportunity Certificate of Compliance with its bid. If a work force analysis of contractor's Workforce Report reflects under-representation, the contractor shall be required to submit an acceptable Equal Employment Opportunity Plan to the San Diego Housing Commission's Equal Opportunity Contracting Unit. **Exclusion: Public entities, nonprofit charitable, educational or religious associations or corporations are excluded from the requirement to submit a Work Force Report.**

EQUAL OPPORTUNITY CONTRACTING:

- Proposer shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age or disability or any other basis prohibited by law in the solicitation, selection, hiring, or treatment of subcontractors, vendors or suppliers. Proposer shall provide equal opportunity for subcontractors to participate in subcontracting opportunities.
- Proposer, if subcontracts are to be let, is to take affirmative steps to contract with small and minority firms, women business enterprises and labor surplus area firms by: (1) Placing qualified businesses on solicitation lists; (2) Directly soliciting such businesses when they are potential sources; (3) Dividing solicitations or contracts into smaller tasks or quantities, when feasible, to permit maximum participation; (4) Establishing delivery schedules to encourage participation; and (5) Utilizing the services of the U.S. Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce.

PROPOSER IS TO DOCUMENT SUCH ACTIONS IN ITS RECORDS AND MAKE AVAILABLE UPON REQUEST BY THE SAN DIEGO HOUSING COMMISSION.

Check type of firm:

- | | | |
|--|---|--------------------------------------|
| <input type="checkbox"/> Architectural/Engineering | <input type="checkbox"/> General Service Provider | <input type="checkbox"/> Maintenance |
| <input type="checkbox"/> Professional Service Provider | <input type="checkbox"/> Construction | <input type="checkbox"/> Supplies |
| <input type="checkbox"/> Real Estate Developer | <input type="checkbox"/> Non-Profit | <input type="checkbox"/> Other |

Check if firm is certified as a: (Submit current certificate or other proof of certification)

- Emerging/Small Local Business Enterprise (ELBE/SLBE) by City of San Diego
- Small Business (SB) by State of California Department of General Services (DGS)
- Disadvantaged Business Enterprise (DBE) by State of California Department of Transportation (Caltrans) or California Unified Certification Program (CUCP)
- Minority Business Enterprise (MBE) by Pacific Southwest Minority Supplier Development Council (PSWMSDC), California Public Utilities Commission (CPUC) or City of Los Angeles
- Women Business Enterprise (WBE) by California Public Utilities Commission (CPUC) or City of Los Angeles
- Disabled Veteran Business Enterprise (DVBE) by State of California Department of General Services (DGS)
- Section 3 Business Concern (Section 3) by the San Diego Housing Commission (SDHC)

Race and gender of controlling interest:

If 51% of the firm is owned and operated by someone in the categories listed below: (Check all that apply)

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

E.O. 11246 SUBMITTAL OF COMPLIANCE REPORTS

This certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any respondent or prospective contractor, or any of their proposed subcontractors, shall state as an initial part of the bid, proposal or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicates that the respondent has not filed Standard Form 100 (EEO-1 Report) due under applicable instructions, such failure to file as required constitutes non-compliance with the equal opportunity clause. **The San Diego Housing Commission may deem a bid/proposal to be 'non-responsive' due to non-compliance.**

Company Name: _____

Address and Zip Code: _____

1. Respondent has participated in any previous contract or subcontract subject to the Equal Opportunity Clause?

Yes No (If answer is yes, identify the most recent contract)

2. Compliance reports were required to be filed in connection with such contract or subcontract?

Yes No (If answer is yes, identify the most recent contract)

3. Respondent has filed SF-100 (EEO-1) with the Joint Reporting Committee, U.S. Department of Labor Office of Federal Contract Compliance or the Equal Employment Opportunity Commission?

Yes No None Required

4. If answer to Item 3 is "No", please explain:

Certification - The information above is true and complete to the best of my knowledge and belief.

Signature

Date

Name and Title of Signer

EQUAL OPPORTUNITY CERTIFICATE OF COMPLIANCE

The City of San Diego, the San Diego Housing Commission and Housing Authority of the City of San Diego are committed to an Equal Opportunity Program pursuant to applicable Federal and State laws and regulations, which provides Equal Opportunity in all activities of the State and its agencies, including the employment of individuals and by firms which contract with the San Diego Housing Commission.

CERTIFICATE OF COMPLIANCE

(Name of Firm)

As an authorized official for the above named firm, I hereby certify by the signature affixed to this document that said firm will comply with Executive Order 11246, as amended, 41 CFR 60-1.4(a); Title VI [Non-Discrimination in Federally Assisted Programs]; Title VII [Equal Employment Opportunity] of the Civil Rights Act of 1964, as amended; the California Fair Employment and Housing Act; the Vietnam Era Veterans' Readjustment Assistance Act, 41 CFR 60-300.5(a); Section 503 of the Rehabilitation Act of 1973, 41 CFR 60-741.5(a); and Age Discrimination in Employment Act of 1967; as applicable, and any other applicable Federal and State laws and regulations currently in existence, or hereinafter enacted.

Further, I am submitting a current Work Force Report, and if requested, an acceptable Equal Employment Opportunity Policy Plan which addresses the corrective actions that will be taken by this firm to eliminate any discriminatory outreach or hiring practices, if they exist, and to introduce outreach and hiring practices to maximize employment opportunities for all qualified individuals.

Name of Authorized Official

Title

Signature of Authorized Official

Date



SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 CERTIFICATION OF COMPLIANCE

The purpose of Section 3 of the Housing and Urban Development Act of 1968, as amended (12. U.S.C. 1701u) (Section 3), is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and Local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons. Section 3 is implemented and regulated by Part 135 of Title 24 of the Code of Federal Regulations (24 CFR 135).

APPLICABILITY

- Recipients and sub-recipients of Section 3 covered assistance, including contractors and subcontractors that perform work on Section 3 covered contracts/projects, are required to comply with Section 3 requirements.
- Section 3 requirements are triggered when there is a need for new hires, contractors, and/or subcontractors.
- Section 3 requirements do not apply to contractors who furnish only materials or supplies and do not undertake the installation of the materials or supplies.

DEFINITIONS

Section 3 Business Concern means a business concern that is:

- I. 51% or more owned by Section 3 Residents ; or
- II. Whose permanent, full-time employees include at least 30 percent of Section 3 Residents, or within three years of the date of first employment with the business concern were Section 3 Residents; or
- III. Provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications above.

Section 3 Resident means a: (1) A resident of public housing who resides in the County of San Diego; or (2) An individual who resides in the County of San Diego, and who meets the following family income limits:

2016 FAMILY INCOME LIMITS								
FAMILY Size	1	2	3	4	5	6	7	8
Maximum Gross Annual Family Income	\$47,600	\$54,400	\$61,200	\$68,000	\$73,450	\$78,900	\$84,350	\$89,800

New Hire means full-time employees for permanent, temporary or seasonal employment opportunities.

NUMERICAL GOALS

Contractors and subcontractors may demonstrate compliance with Section 3 by committing to the following:

- I. Employ Section 3 Residents as 30 percent of total new hires;
- II. Award Section 3 Business Concerns at least 10 percent of the total dollar amount of all Section 3 covered construction and renovation contracts; and
- III. Award Section 3 Business Concerns at least 3 percent of the total dollar amount of all other Section 3 covered contracts.



Contractors and subcontractors must document their efforts to realize the numerical goals.

SECTION 3 REQUIREMENTS FOR BIDDERS/PROPOSERS

Section 3 and Equal Opportunity Contracting Project Utilization Plan

- I. Submittal of Section 3 and EOC Project Utilization Plan:
Bidder/Proposer AND its first-tier subcontractors are to submit a completed Section 3 and Equal Opportunity Contracting Project Utilization Plan(s) in bid. If not, Utilization Plan(s) must be submitted within 24 hours, upon request by SDHC. **A “non-responsive” determination may be made due to non-submittal within 24 hours.**

- II. Submittal of Supporting Documentation:
Bidder/Proposer AND its first-tier subcontractors whose Utilization Plans indicate no subcontract awards to certified Section 3 Business Concerns will be required to submit, within 24 hours upon request by SDHC, supporting documentation for review and approval verifying efforts to outreach to and award subcontracts to Section 3 Business Concerns. **A “non-responsive” determination shall be made due to a lack of documented outreach to Section 3 Business Concerns by the Bidder/Proposer.** With the exception of bids/proposals indicating no projected opportunities for hiring new employees and/or awarding subcontracts.

- III. Waivers:
At its discretion, SDHC may grant waivers for noncompliant contractors who have demonstrated “good cause” as to why the Section 3 numerical goals were not met. SDHC will not execute a contract/agreement that does not incorporate by reference an approved plan to utilize certified Section 3 Business Concerns and/or Residents, or reference the waiver granted by SDHC. Bids/proposals that indicate that there are no plans to hire new employees and award subcontracts may receive a waiver.

SECTION 3 REQUIREMENTS FOR AWARDEES

Section 3 Clause

All Section 3 covered contracts and subcontracts shall include the following clause set forth at 24CFR135.38:

- a) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

- b) The parties to this contract agree to comply with HUD’s regulations in 24 CFR part 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 the 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.



Administrative Services

- e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- f) Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- g) With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

Compliance Monitoring

Section 3 compliance monitoring will be performed by SDHC Section 3/EOC Unit. **Contractors and subcontractors who submitted approved Utilization Plans shall maintain their approved percentages of Section 3 participation throughout the term of the contract/project. Contractors and/or subcontractors whose Utilization Plans projected no new hires must, to the greatest extent feasible, hire certified Section 3 Residents if the need to hire occurs.** Contractors and subcontractors will be required to submit certified payroll and/or new hire reports.

FREQUENCY OF MONITORING				
Contract Description	Award/ Negotiation	Monthly	Quarterly	Completion
Construction	X	X		X
Non-Construction (<3 months' performance)	X	X		X
Non-Construction (>3 months' performance)	X		X	X
Note: SDHC will periodically conduct unscheduled job-site/work-site interviews of contractor's and/or subcontractors' employees.				

Noncompliance with HUD's regulations in 24CFR135 may result in sanctions, termination of contract for default, and debarment or suspension from future HUD-assisted contracts.

The undersigned hereby agrees to comply with all the provisions of Section 3 as set forth in 24CFR135.38 and SDHC's Section 3 requirements.

Acknowledged By:

Name of President or Authorized Officer

Company Name

Signature and Title

Date

Please contact the Section 3 Program Analyst at (619) 578-7579 or section3@sdhc.org for a list of certified Section 3 Business Concerns and/or Residents, or to verify the Section 3 certification eligibility of any prospective subcontractor or new hire.

General Requirements

1) **CONSTRUCTION PROGRESS SCHEDULES**

At the time of the Pre-construction Conference meetings, Contractor shall submit a draft copy of the Construction Progress Schedule (CPS) to the Contracting Officer. The CPS shall be in the Critical Path Method format. The schedule will incorporate start and finish dates and Work Order tasks as stated in the Work Order Detailed Scope of Work, and any Technical Specifications incorporated by reference, and made part hereof. Furthermore, the CPS shall reflect percentages completed, progress bars, milestones, and any phasing required for performance of work under the Project Work Order. The Critical Path shall be tracked against a baseline. The critical path is to be updated on a monthly basis as work progresses or whenever a deviation or modification in the Technical Specifications occur.

2) **SPECIFICATIONS AND DRAWINGS**

In case of difference between drawings and specifications, the more stringent shall apply.

3) **PERMITS AND CODES, ORDINANCES AND CODES**

Construction and materials shall conform with applicable requirements of the documents listed project specifications.

All work and materials shall be in full accordance with the latest rules and regulations of the California IAC; the safety orders of the Division of Industrial Safety; the National Electric Code; the Uniform Building Code, latest edition; the Federal Water Pollution Act (also referred to as the Clean Water Act (CWA)); regulations under the National Pollutant Discharge Elimination System (NPDES); the permit requirements published by U.S. Environmental Agency (USEPA) and other applicable federal and state laws or regulations. Nothing in these plans or specifications is to be construed to permit work not conforming to these codes.

In any case of conflict between any of the documents mentioned above and the specifications and drawings, the highest requirements shall govern. No extras shall be allowed for any changes to make the work conform with the regulations of the above mentioned documents; they shall be considered as completely included in the Work Order price.

4) **HEALTH, SAFETY, AND ACCIDENT PREVENTION, SAFETY**

In accordance with generally accepted construction practices, the Contractor will be solely and completely responsible for conditions of the job site, including safety of all persons and property during performance of the work. This requirement will apply continuously and not be limited to normal work hours.

5) **INSPECTION AND ACCEPTANCE OF CONSTRUCTION, PERMITS AND INSPECTIONS**

Unless otherwise specified, the contractor shall secure and pay for all permits, inspection fees and licenses as necessary and or required for the proper execution and completion of the work. The San Diego Housing Commission is not a self-inspecting agency.

6) **WARRANTY OF CONSTRUCTION**

Nothing contained in any paragraph of the work order shall limit the right of the San Diego Housing Commission to file a suit and/or commence an arbitration within any applicable statute of limitation period, against the Contractor for the Contractor's failure to perform to the Work Order requirements or for any defects in any construction, equipment, material, workmanship or design furnished pursuant to the Work Order, including without limitation patent defects, latent defects, mistakes, negligence or fraud. Nor shall warranties limit the right of the San Diego Housing Commission to file a lawsuit with any applicable statute of limitations, including, without limitation, California Code of Civil Procedure

Sections 338, 337, 337.1, 337.15 and any and all other applicable statutes of limitations concerning the indemnity provisions of Article 3 of the Work Order and/or for breach of the project Work Order and/or for negligence of the Contractor and/or subcontractors. Further, nothing contained herein shall preclude the San Diego Housing Commission from instituting litigation against the Contractor after the expiration of the **one-year** warranty, measured from the date of the final acceptance of work, for damages, including, but not limited to, the cost of repairing and/or replacing any defects in equipment, material, workmanship and/or failure to conform with Work Order requirements, provided that the lawsuit and/or demand for arbitration is instituted and/or made within the applicable statutes of limitation.

It is expressly declared to be the intent of Section 23 of the General Conditions to limit the Contractor's duty to personally correct work to the **One-Year** period of time, but not to limit the right of the San Diego Housing Commission to institute limitation and/or demand litigation and/or arbitration after said Error! Reference source not found. **One-Year** period to collect damages, including the cost and repair of defective construction, work, material, workmanship, equipment and design and/or failure to conform to the Work Order requirements by the Contractor and for any and all damages flowing out of or arising from said failure. Any ambiguity in the project Work Order shall be construed in favor of allowing the San Diego Housing Commission to collect damages from the Contractor, to correct, replace and repair defects in construction, design, workmanship, material, equipment and/or failures to conform to Work Order requirements and to provide safe, decent, sanitary and defect-free housing to the members of the public.

Contractor acknowledges and agrees, that in the event that an "Emergency" or Emergencies", as hereinafter defined, are discovered and/or occur during times that the Contractor cannot immediately (defined as within one (1) hour of oral notification from the Commission) respond and take such corrective actions as are necessary to abate the cause of the emergency and/or repair the damage caused by the emergency, the Commission shall be entitled to and may, at the sole cost and expense of the Contractor, take such actions as are necessary, in the opinion of the Commission, to abate the emergency and to repair any and all damages caused by the emergency. Contractor shall, within five (5) days of the receipt of invoice(s) from the Commission reimburse the Commission and/or pay such invoice(s), as the Commission shall direct. Failure of the Contractor to so reimburse the Commission and/or pay the invoice(s) within the required time period, may, at the option of the Commission be deemed a material default under the terms of the Work Order.

7) PAYMENTS

Before final payment on work is authorized and/or paid, the following requirements of Work Order documents shall have been fulfilled:

1. Satisfactory completion of all construction work and acceptance by the Commission and HUD.
2. Submission, by contractor to the Commission, of all required written guarantees.
3. The submission, by the Contractor to the Commission, of an affidavit, sworn to before a Notary Public, stating that all workmen and persons employed, all firms supplying the materials, and all subcontractors upon the project have been paid in full, and that there are no bills outstanding against the project for either labor or materials, except certain items, if any, to be set forth in such affidavit covering disputed claims, or items in connection with Notices to Withhold have been filed under the provisions of the Statutes of the State of California.
4. Except as otherwise provided in State law, the PHA shall retain five (5) percent of the amount of progress payments until completion and acceptance of all work under the Work Order.
5. All requests for progress payments and final payment shall be prepared and submitted to the SDHC in accordance with the General Conditions and other related Sections of the Work Order Documents and shall utilize the forms and formats as identified and provided by the SDHC. The required forms for submittal of payment requests will include; but not be limited to:
 - a. Form HUD 51000 – Schedule of Amounts for Contract Payments.
 - b. Form HUD 51001 – Periodic Estimate for Partial Payment
 - c. Form HUD 51002 – Schedule of Change Orders

Along with each request for Progress payments and required estimates, the General Contractor shall furnish a Certification of Payments to Subcontractors form.

Progress Payments shall be submitted electronically to the assigned Construction Manager for review and comment. Progress payment forms shall reference the project's approved Purchase Order number and all other pertinent Work Order related information.

Contractor shall familiarize him/herself with the required forms and procedures and submit requests in a complete and timely manner. The SDHC will not make Progress Payments of final payment without complete and property executed paperwork.

8) LIQUIDATED DAMAGES

As actual damages for any delay in completion are impossible to determine, the Contractor and his sureties shall be liable for and shall pay to the San Diego Housing Commission monies as set forth in the General Conditions, Special Conditions, and Technical Specifications for each calendar day of delay until the work is completed and accepted by the San Diego Housing Commission.

9) INSURANCE

In addition to the insurance requirements set forth in the National Joint Powers Alliance (NJPA) contract the Contractor may be required to procure and provide the Commission with additional coverage that includes, but is not limited to: Fire and Extended Coverage, Pollution Liability.

The standard insurance requirements for SDHC projects are as follows:

- **“Commercial General Liability** with a combined single limit for bodily injury and property damage limits of not less than \$1,000,000.00 per occurrence...”
- **“The Contractor and sub-contractor shall add as additional insured the City of San Diego, the Housing Authority of the City of San Diego, the San Diego Housing Commission, all Commissioners, officers and employees of each public agency.”**
- **“Workers’ Compensation**, in accordance with state or Territorial Workers’ Compensation laws...”
- The Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the contractor, its employees, agents and subcontractors.
- **Certificate Holder for Contractor and Sub-contractor** shall read: City of San Diego, the Housing Authority of the City of San Diego and the San Diego Housing Commission, 1122 Broadway, Ste. 300, San Diego, CA 92101.
- All **Additional Insured** are to be included on all Endorsement forms for the insurance types listed above. (Only Forms CG 20 10 11 85 or CG 20 10 10 01 *and* CG 20 37 10 01 will be accepted).

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VIII unless otherwise acceptable to the Commission.

10) SUBCONTRACT(S)

- a) "Subcontract" means any contract, purchase order, or other purchase agreement, including modifications and change orders to the foregoing, entered into by a subcontractor to furnish supplies, materials, equipment, and services for the performance of the prime contractor a subcontract.
- b) "Subcontractor" means any firm that furnishes supplies, materials, equipment, or services to or for the Contractor or another subcontractor. Subcontractor for this purpose is defined in Government Code Section 4113, which provides in pertinent part "subcontractor" shall mean a contractor, within the meaning of the provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code of the State of California, who contracts directly with the Contractor.
 - i. The Contractor shall not enter into any subcontract with any subcontractor who has been temporarily denied participation in a HUD program or who has been suspended or debarred from participating in contracting programs by any agency of the United States Government or of the state in which the work under the project Work Order is to be performed.
 - ii. The Contractor shall be as fully responsible for the acts or omissions of its subcontractors, and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Contractor.
 - iii. The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of the project Work Order insofar as they are applicable to the work of subcontractors.

Nothing contained in the project Work Order shall create any contractual relationship between any subcontractor and the PHA or between the subcontractor and HUD.

11) COMMUNICATIONS

All notices, demands, requests, instructions, approvals, proposals, and claims must be in writing. Any notice to or demand upon the contractor shall be deemed sufficiently given if delivered at the office of the Contractor as stated on the signature page of the Work Order (or at such other office as the Contractor may from time to time designate in writing and deliver to the SDHC, or deposit in the United States mail in a sealed, postage-prepaid envelope or deliver with charges prepaid to any telegraph office for transmission, in each case, addressed to such offices).

All papers to be delivered to the SDHC shall, unless otherwise specified in writing to the Contractor, be delivered to the **SDHC, 1122 Broadway, Ste. 300, San Diego, CA 92101**, and any notice to or demand upon the SDHC shall be sufficiently given if so delivered, or deposited in the United States mail in a sealed postage-paid envelope, or delivered with charges prepaid to any telegraph company for transmission to said SDHC at such address or to such other representatives of the SDHC or to such other address as the SDHC may subsequently specify in writing to the Contractor for such purpose.

Any such notice shall be deemed to have been given as of the time of actual delivery; or in the case of mailing, when the same should have been received in due course of post in the case of telegrams, as the time of actual receipt, as the case may be.

12) CONTRACTOR'S LICENSE

The Contractor and subcontractors shall be licensed for the type of work to be performed as prescribed by the State Contractor's Licensing Board and shall maintain a valid license for the term of the Work Order. It shall be the responsibility of the Contractor to determine the type of license required for the specific work performed. The Contractor and subcontractors shall have current City Business Licenses.

The Commission will make available to the Contractor, with reasonable promptness, such further detail explanations, instruction, and drawings as may be necessary for the proper execution of the work. In giving such additional instruction, the Commission shall have the authority to make minor changes in the drawings and specifications.

13) CONSTRUCTION PROGRESS DOCUMENTATION

Contractor shall provide the following Construction Progress Documentation:

a. **Daily Construction Progress Reports:**

The General Contractor shall provide copies of the Daily Construction Progress Reports to the project's Construction Manager and the Labor Compliance Manager on a weekly basis but no later than 10:00 a.m. on the Monday following the week being reported. These report shall be inclusive of all productions and quantities of materials delivered/installed, portions of work completed to date and general summaries of daily executed tasks.

b. **Work Force Log In/Log Out Reports:**

The General Contractor shall provide these logs to the Construction Manager and the Labor Compliance Manager on a weekly basis; but no later than 10:00 a.m. the Monday following the week being reported (General Contractor may provide the information on the Daily Construction Progress Report). This report shall be inclusive of all employees, subcontractors, material delivery personnel, architects/engineers, owner's representatives, inspectors or any other project related personnel at the site.

c. **Tailgate Safety Meeting Reports:**

The General Contractor shall provide these meeting reports to the Construction Manager on a weekly basis; but no later than 10:00 a.m. the Monday following the week being reported. The General Contractor shall conduct on-site safety meetings on a weekly basis. All personnel that will be working at the project site shall be required to be present at the time of the meeting and sign the Tailgate Safety Meeting document.

d. **Photo Documentation:**

The General Contractor shall conduct photo documentation during the course of the work and submit to the SDHC Construction Manager electronically on a weekly basis in a .jpg format.

All documents referenced in this section can be submitted electronically to the Construction Manager and Labor Compliance Manager accordingly.

14) DEFECTIVE WORK AND MATERIALS

The contractor shall promptly remove from the premises all materials condemned by the Commission as failing to conform to the Work Order whether incorporated in the work or not, and where materials and/or work have been condemned by the Commission, the Contractor shall promptly replace and re-execute his/her work in accordance with the Work Order and without expense to the Commission and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

15) DUST PALLIATION

Throughout the entire Work Order period, the Contractor shall effectively dust-palliate the working area. Such palliation shall consist of such frequency as will satisfactorily allay the dust during all hours that work is being performed. Manufactured items installed in this project and not specifically covered in the specifications are to be installed in strict accordance with the manufacturer's current printed instructions.

16) EMERGENCIES ARE DEFINED AS:

- a) Emergency work after normal business hours, Housing Commission observed holidays and office closures. Normal business hours are Mon-Fri 8am – 5pm.
- b) Emergency physical work items that pose an immediate threat to life, health, safety, or property, or that are related to fire safety.
- c) Emergency status abated means that an emergency work order is either fully completed, or the emergency condition is temporarily eliminated and no longer poses an immediate threat. If the work cannot be completed, emergency status can be abated by transferring the resident away from the emergency situation.
- d) Emergency work order is a work order, from any source, that involves a circumstance that poses an immediate threat to life, health, safety or property, or that is related to fire safety.

Further, nothing contained in the Guarantee Provisions of the project Work Order, either within the General Conditions or the Special Conditions shall limit the rights of the PHA to collect damages as set forth in this paragraph entitled Warranty of Construction.

17) EQUIPMENT FURNISHED BY OTHERS

- a) The following equipment will be furnished by others but installed by the Contractor:

N O N E

- b) The equipment will be delivered to the Contractor at the project site. The Contractor shall, at his expense and risk, unload and install the equipment, and do any necessary hauling to the places for installation. The Contractor shall furnish the Commission with a schedule of his need for equipment sufficiently of such need to enable the Commission to obtain delivery under the procurement contracts.
- c) Where the type of equipment requires rough-in dimensions, the Architect or Contracting Officer will furnish them to the Contractor as soon as available.
- d) When equipment arrives at the delivery point, the Contractor shall promptly unload and transfer it to the project site, unless otherwise permitted or directed. The equipment shall not be unloaded except in the presence of a representative of the Commission with whom the Contractor shall jointly determine what, if any, damage has occurred in transit, and the responsibility therefore. Turnover of the equipment to the Contractor shall then be formalized by means of transfer receipt, executed in triplicate, signed by the representatives of the Contractor and the Commission.
- e) The Contractor shall inspect all equipment items for latent defects or concealed damage and for shortages, and immediately report all such discrepancies to the Commission so that correction or replacement can be obtained.

- f) The provision to "install" as used in this section, covers all operations and materials in connection with this equipment necessary to (1) distribute; (2) uncrate; (3) assemble as may be normally necessary; (4) place in permanent position; (5) connect up; and (6) clean up.
- g) The Contractor shall deliver all such equipment in whole and satisfactory operating condition. He shall be responsible for actions and costs applicable to final testing, adjusting, and checking for proper performance.

18) GUARANTEE OF WORK

- a) Except as otherwise specified, all work shall be guaranteed by the Contractor against defects resulting from the use of inferior materials, equipment, or workmanship for a period of **one (1) year** from the date of final completion of the Work Order or from full occupancy of all the buildings by the Commission, whichever is earlier.
- b) If, within any guarantee period, repairs or changes are required in connection with guaranteed work, which, in the opinion of the Architect, is rendered necessary as the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the Work Order, the contractor shall, promptly upon receipt of notice from the Commission, and without expense to the Commission:
 - 1) Place in satisfactory condition, in every particular, all of such guaranteed work, correct all defects therein.
 - 2) Make good all damage to the buildings or sites, or equipment or contents thereof, which, in the opinion of the Commission, is the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the Work Order.
 - 3) Make good any work or material, or the equipment and contents of said buildings or site disturbed in fulfilling any such guarantee.
 - 4) In any case wherein fulfilling the requirements of the Work Order or of any guarantee, embraced in or required thereby, the Contractor, disturbs any work guaranteed under another Work Order, he/she shall restore such disturbed work to a condition satisfactory to the Commission and guarantee such restored work to the same extent as it was guaranteed under such other Work Order.
 - 5) If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the Commission may have the defects corrected and the Contractor and his/her surety shall be liable for all expenses incurred.
 - 6) All special guarantees applicable to definite parts of the work that may be stipulated in the specifications or other papers forming a part of the Work Order shall be subject to the terms of this paragraph during the first year of the life of such special guarantee.

19) JOB OFFICES

- a) The Contractor must designate an area to serve the posting requirements of the project Work Order. The board (4x8) must be in plain view in a well trafficked area at each site. On this board will be posted EEO and wage information in compliance with the General Conditions of the project Work Order.
- b) The Contractor and his subcontractors may maintain such office and storage facilities on the site as may be necessary for the proper conduct of the work. These shall be located so as to cause no interference with any work to be performed on the site. The Architect or Contracting Officer shall be consulted with regard to locations.

- c) Upon completion of the project, or as directed by the Commission, Contracting Officer or Architect, the Contractor shall remove all such temporary structures and facilities from the site, same to become his property, and leave the premises in the condition required by the Contracting Officer.

20) LIQUIDATED DAMAGES FOR FAILURE TO TIMELY EXECUTE AND SUBMIT CLOSE-OUT DOCUMENTS

- a) Upon written notification by the Commission to the Contractor must submit the below listed project close out documents:

1. Davis Bacon and/or State prevailing Certified Payrolls Reports and Statements of Compliance;
2. Section 3 Final Documents, if applicable
3. Contractor's Certificate and Release, appropriately notarized;
4. Release of Lien;
5. Operation, Maintenance, and Warranty (OM&W) Manual
Guarantees;
Warranties;
Assignment of Guarantees;
As Built Plans; Manufacturer's Guarantees;
Any and all documents reasonably required by the SDHC
6. Payment:
Request for Retention Release;
Request for Final Payment; and
7. Any and all forms reasonable required by the SDHC.

The Contractor shall prepare and submit the properly executed closeout forms, documents, and plans within **twenty-one (21) days** of receipt of the written request from the SDHC. Time is of the essence in submitting the documentation completely and accurately filled out.

- b) Upon the failure of the Contractor to timely submit the forms, the Contractor shall accrue liquidated damages, for each and every day that the Contractor fails to submit all of the documentation referenced above. The liquidated damages constitute a good faith estimate by the Contractor and the Commission in advance of the breach by the Contractor of the damages that the Commission is expected to experience for each and every day that the close out documents are not timely submitted. The Commission incorporates by reference the language contained within the Technical Specifications, the Agreement and each and every other reference to Liquidated Damages contained within the Agreement.

Section 17 of this Section titled Project Closeout Documents and Procedures outlines the list of required documents.

21) **NORMAL SEASONAL RAINFALL DEFINED**

Normal seasonal rainfall shall not be considered reason for time extension. Normal seasonal rainfall shall be determined from the rainfall record of the U.S. Weather Bureau, taken at the recording station nearest the site of construction, and shall be the monthly averages of the past thirty (30) years, of the number of days in which .01 inch or more of rain was recorded.

22) **PRE-FINAL INSPECTION**

- a) Prior to the completion of the work, the Contractor shall notify the Commission that the work is substantially complete and request that a preliminary final inspection be made with the Commission.
- b) The Contractor's request shall include a list of items which will not be finished at the time of the inspection, but which will be completed by the time of the final inspection.
- c) If, in the opinion of the Commission, sufficient work has been completed to warrant the pre-final inspection, the Commission will notify the Contractor and arrange for the date and time of the inspection.
- d) At the completion of the pre-final inspection, the Commission will present the contractor with a list of items to be finished, corrected and/or re-done before the final inspection and shall arrange with the Contractor a time and date for either another pre-final inspection or for the final inspection. Items listed on the pre-final or final inspection (punch list) must be completed within seven (7) calendar days.

23) **PROGRESS MEETINGS**

The General Contractor shall conduct weekly Progress Meetings at the site during the progress of work and prepare the following documents:

1. Meeting agenda, and
2. Take and distribute meeting notes to the attendees.

Attendees taking exception to anything in the meeting notes shall state their objections in writing within five (5) working days following receipt.

As part of the last weekly Progress Meetings each month, the General Contractor shall schedule and hold a billing meeting with the SDHC's Construction Manager in attendance, to agree on the percentage of work completed up to that date and establish the amount to be requested in the next Periodic Estimate for Partial Payment.

24) **PROJECT CLOSEOUT DOCUMENTS AND PROCEDURES**

- a. **Preparation and Provision of Project Record Documents:**
All original permits, inspection cards, stamped or perforated drawings for construction (plans) and other project documentation that constitute the Project Record Documents. Contractor shall store the Project Record Documents in the field office apart from documents used for construction. Contractor shall maintain the Project Record Documents in a clean, dry, legible condition and in good order. Contractor shall not use the Project Record Documents for construction.

- i. The Contractor shall prepare, as additional Project Record Documents, as-built plan documents depicting all revisions and deviations (if applicable). Drawings shall be in AutoCAD .dwg format and Adobe .pdf formats or as otherwise approved by the SDHC. Contractor shall provide one (1) full-size hard copy print and (1) electronic copy of all as-built drawings and files. Hand-drawn or "red-line" drawings shall not be accepted without the SDHC's prior approval, which approval shall be at the SDHC's sole discretion. Drawings shall be legible, reproducible, and properly identified such they may be used as a reference for maintenance or construction.
- ii. The Contractor shall prepare, as additional Project Record Documents, the Operation, Maintenance and Warranty Binder (OM&W Binder). Contractor shall provide one (1) hard copy bound in a three-ring binder and one (1) electronic copy in Adobe .pdf format of the OM&W Binder. The OM&W Binder shall be organized by Technical Specification Section number, submitted in its original form (wet signatures) and shall contain the following items at a minimum:
 1. Table of Contents
 2. A list containing the names, business telephone numbers, emergency telephone numbers, e-mail addresses, website addresses and other contact information for the Contractor and all subcontractors and major suppliers/manufacturers associated with the project.
 3. The identified building system or component and the name of the Contractor or subcontractor performing work on this system.
 4. A detailed description of system operation, including start-up, shut-down and emergency procedures as well as ny installation and safety instructions.
 5. Single line diagrams and control wiring diagrams.
 6. Drawings for construction and Shop drawings.
 7. Detailed product literature with technical information inclusive of use and care instructions.
 8. Maintenance schedule, testing instructions and performace parameters.
 9. Parts list including recommended spare/replacement parts.
 10. Manufacturer's warranties for all major components.
- iii. All Project Record Documents and Closeout Documents shall be provided to the SDHC within twenty-one (21) calendar days of receipt of written request from the SDHC following the Notice of Completion.

b. Additional Project Closeout Documents and Procedures.

- i. **Restoration of Damaged Work:**

Restore or replace damage materials and finishes caused by Contractor during the performance of this work. Such restoration shall be at no additional cost to the SDHC. Restoration shall be equal to the original work, and finishes shall match the appearance of existing adjacent work.
- ii. **Correction of Defective Work and Materials:**

Replace work due to defective workmanship or materials at no additional cost to the SDHC. Coordinate work with the SDHC and perform at such time and manner to cause minimal interruption and inconvenience to the SDHC operations.
- iii. **Contractor's Certificate and Release:**

Contractor shall complete, execute, notarize and submit an original document of this form.

- iv. **Release of Lien:**
Contractor shall complete, execute, notarize and submit an original document of this form.
 - v. **Guarantee:**
Contractor shall guarantee the entire work against defects in materials and workmanship for one (1) year from the date of acceptance. Warranties between the Contractor and manufacturers, and the Contractor and suppliers shall not affect the guarantee between the Contractor and the SDHC. Submit the guarantee on the Guarantee Form provided in the Special Conditions, typed on the Contractor's letterhead.
 - vi. **Final Certified Payroll Reports:**
All final Certified Payroll Reports must be marked "final" and submitted to the Labor Compliance Department for review and approval.
 - vii. **Section 3 Documents, if applicable (Federally Funded Projects):**
All final Section 3 forms must be submitted to the Section 3 department for review and approval.
- c. In no event shall final payment be made to the Contractor prior to the SDHC's receipt and approval of the Project Closeout Documents.

25) PROTECTION OF ADJOINING WORK

During the installation of work, Contractor shall insure that adjoining areas are adequately protected by the installing contractor and that upon completion of all work by each trade, all surfaces and adjoining surfaces that may have been damaged are restored to a condition acceptable to the Commission.

26) REMOVAL OF PLANT AND CLEAN-UP

Upon completion of the work, the Contractor shall remove all his/her plant, tools, material, and other articles from the property. Should he/she fail to take prompt action to this end, the Commission, at its option and without waiver of such other rights as it may have, may on thirty (30) days' notice treat them as abandoned property. All rubbish, debris, and waste material shall be completely removed. The entire area, including all fixed equipment, floors, and hardware shall be cleaned to remove paint spots and accumulated dirt or dust, and shall be left broom-clean.

The cleaning shall include a thorough cleaning of all window sills and ledges, horizontal projections, floors, and other surfaces where dirt has collected. Plumbing fixtures, and all built-in equipment shall be thoroughly cleaned and polished. Glass shall be washed on both sides.

If the Contractor fails to clean up, the Commission may do so and the cost thereof shall be charged to the Contractor.

27) SCAFFOLDING

Scaffolding shall be the responsibility of each trade requiring same. Scaffolding shall be approved by the State of California Safety Orders.

28) SITE VISIT

Contractor is to accept site as-is, and further demolition or repair of public improvements required will be the responsibility of the contractor.

29) STORM WATER MANAGEMENT, DISCHARGE CONTROL, DRAINAGE REGULATIONS AND GRADING.

Contractor shall, in performing the work specified in the Work Order documents, the plans, the general conditions, these special conditions, the scope of work and as otherwise expressly or implicitly required by the Work Order, comply with any and all applicable state, federal and/or local requirements for the proper handling of storm waters, for discharge control, for drainage and grading, including but not limited to the provisions of the San Diego Municipal Code as referenced generally in Chapter 4 of Article 3 of Division 3, Storm Water Management and Discharge Control, Chapter 14, Article 2, Division 1, Grading Regulations, Chapter 14, Article 2, Division 2, Drainage Regulations, including but not limited to the following Sections of the San Diego Municipal Code, Sections 142.0101 et. seq.; Sections 142.0201 et. seq.; Sections 43.0301 et. seq., all as amended from time to time.

In addition, the Contractor shall comply with the provisions and requirements of the City of San Diego Water Pollution Prevention Program, as referenced in Chapter 3.4, entitled Construction Contracts, which section is on file in the office of the San Diego Housing Commission. In the event that any of these provisions and requirements conflict with any others, the most stringent requirement shall apply. To the extent that federal law conflicts with the requirements of this provision and federal law is more stringent than the local requirements, the federal law shall apply. It is the intent of the San Diego Housing Commission and the Contractor, by executing the Work Order to do the work that all work be done in strict compliance with all state, local and federal requirements concerning storm runoff, discharge of storm runoff and proper drainage and grading procedures.

30) **TELEPHONE PRE-WIRE & TEMPORARY UTILITIES DURING CONSTRUCTION**

Contractor will contract and pay for telephone pre-wiring, if necessary. Contractor will coordinate installation of this pre-wiring with the appropriate service provider. Any costs associated with temporary utilities including, but not limited, to electricity, water, or telephone, will be coordinated by, and at the expense of, the Contractor.

31) TESTS AND INSPECTIONS

Arrangements for testing and inspections, as required, shall be authorized and performed under the direction of the Commission's authorized representative. The costs of all material tests that fail to meet specifications shall be deducted from the Work Order price. The costs of all material tests that meet specifications shall be paid for by the Commission.

32) WARRANTIES AND GUARANTEES

The Contractor warrants to the Commission that all materials and equipment furnished under the project Work Order will be new unless otherwise specified, and that all work will be of good quality, free from faults and defects and in conformance with the Work Order documents. All work not conforming to these requirements, including substitutions not properly approved and authorized may be considered defective. If required, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

33) SITE PROTECTION

In addition to the requirements set forth in these Special Conditions and the General Conditions, Contractor shall be solely responsible for securing, maintaining, and protecting all site(s) and dwelling(s) described within the project Work Order for the entire duration of the project Work Order. The security, maintenance, and protection shall include, but, not be limited to theft, vandalism, utility shut-offs, plant and landscape irrigation, inclement weather, and sun exposure, including Normal Seasonal Rainfall and rainfall in excess of Normal Seasonal Rainfall as defined herein.

As the Contractor progresses through each phase of his or her work, he or she shall administer any and all necessary requirements to ensure complete and continuous security, maintenance, and protection for all new and existing site and building materials and elements. Contractor shall use his or her expertise in determining the most effective means and methods in achieving a secure, maintained, and protected environment at the site(s) and dwelling(s). All expenses shall be included in the Contractor's Cost Proposal under the Work Order with no additional cost to the Commission.

Any "tagging" or other form of destructive damage shall be covered and/or repaired within 24 hours. All temporary repairs and or measures shall be aesthetically pleasing and indicative of a "well maintained" site(s) and, performed at the sole expense of the Contractor.

SAN DIEGO HOUSING COMMISSION
AGREEMENT FOR
JOB ORDER CONTRACTING (JOC)
INDEFINITE QUANTITY CONSTRUCTION SERVICES
WITH
COMPANY NAME
AGREEMENT NO. JOC-XX-XX

THIS AGREEMENT, entered into this ____ day of _____, 20____, between *COMPANY NAME* (“Contractor”), the San Diego Housing Commission (“Commission”) on its own behalf and on behalf of each limited liability company marked below, as the sole manager of such limited liability company, and as the managing agent of such limited liability company, and as the sole member of such limited liability company, each of which is a separate public agency within the state of California, for each of the residential properties owned by the entity, and each of the following:

- Belden SDHC FNMA LLC, a California limited liability company
- Central SDHC FHA LLC, a California limited liability company
- Central SDHC FNMA LLC, a California limited liability company
- Northern SDHC FHA LLC, a California limited liability company
- Northern SDHC FNMA LLC, a California limited liability company
- Southern SDHC FHA LLC, a California limited liability company

The above-selected entities shall be collectively referred to herein as the “SDHC Limited Liability Companies”. Each of the above SDHC Limited Liability Companies is registered as public agencies with the State of California.

THIS AGREEMENT (the “Agreement”), entered into this ____ day of _____, 20____,

between the Commission:

SAN DIEGO HOUSING COMMISSION
1122 Broadway, Suite 300
San Diego, California 92101
(619) 231-9400

and the Contractor:

COMPANY NAME
ADDRESS
CITY
PHONE

WITNESSETH, that the Contractor, SDHC Limited Liability Companies, and the Commission for the consideration stated herein mutually agree as follows:

ARTICLE 1. Statement of Work: The Contractor shall furnish, under this Job Order Contract (JOC) all construction labor, material, equipment and services, and perform and complete all construction work required on a Job Order by Job Order basis in accordance with the construction services tasks set forth in the Construction Task Catalog (CTC) included in the National Joint Powers Alliance (NJPA) contract number CA-xxx attached hereto as Exhibit D.

This Agreement shall not be effective unless and until the Agreement has been executed by the San Diego Housing Commission, SDHC Limited Liability Companies and the Contractor and the Agreement has been approved by the Board of Commissioners of the San Diego Housing Commission. This Agreement is entered into in accordance with the terms of San Diego Housing Commission Administrative Regulation number AR203.200 "Job Order Contracting" and is permitted under the provisions of both California State Law concerning Joint Powers Agreements and federal law allowing cooperative purchasing agreements, as referenced with San Diego Housing Commission Administrative Regulation AR-203.200. To the extent that compensation under this Agreement is anticipated to exceed the sum of \$XXX per annum, this Agreement shall not be effective unless and until approved by the Housing Authority of the City of San Diego.

ARTICLE 2. Time of Performance:

a. Initial Term

This Agreement shall commence effective XXX and continue through XXX.

b. Option to Extend Term

The President and Chief Executive Officer, or his or her delegated designee, of the Commission may, at his/her election, extend the term of this Agreement for XXX additional one-year terms by giving written notice of the election to extend the Agreement to the Contractor in advance of the expiration of the prior term of the Agreement. Those additional one (1) year option terms would be, if exercised, as follows:

Option Period X: XX-XX

Only one (1) option may be exercised at any one time during any term of the Agreement. The option to extend the Agreement may be granted by the Commission in its sole discretion and is dependent upon the availability of funds and budget approval by the Housing Authority of the City of San Diego ("Housing Authority") and the exercise of extension options by the National Joint Powers Alliance (NJPA) as detailed in Article 4 "Term of the Agreement" of NJPA contract No. CA-XXX.

Nothing contained in this Agreement shall require the Commission to exercise any or all of the options to extend the term of the Agreement. The options exist in favor of the Commission, at its sole option. All other terms and conditions of the Agreement during the option period(s) shall be as set forth in the Agreement and shall be unamended by the exercise of any option granted herein.

ARTICLE 3. Compensation: The Commission and/or SDHC Limited Liability Companies shall compensate the Contractor, on a Job Order by Job Order basis, in accordance with the contract pricing

set forth in the Construction Task Catalog (CTC) included in the National Joint Powers Alliance (NJPA) contract number XXX for all services performed and all Job Orders issued pursuant to this Agreement shall not exceed the accumulated sum of XXX annually. Contractor acknowledges that the Commission and/or SDHC Limited Liability Companies are under no obligation to procure any specific amount of services under this Agreement or to compensate Contractor for services rendered or expenses accrued under this Agreement in excess of the maximum compensation specified above.

It shall be the responsibility of the Contractor to monitor its activities to ensure that all work under the Job Orders issued pursuant to this Agreement may be completed, and no charges accrued in excess of the maximum compensation during the term of this Agreement. In the event that the work required cannot be completed within the amount specified, or it appears that the maximum compensation provided may be exceeded before the term of the Agreement expires, Contractor shall promptly notify the Commission and/or SDHC Limited Liability Companies.

Further, the Commission and/or SDHC Limited Liability Companies may cancel the Agreement, without cause, by written notice to the Contractor at any time during the term of the Agreement, or any extension thereto, in the event that the Commission, SDHC Limited Liability Companies and/or the Housing Authority of the City of San Diego (“Housing Authority”) fails to appropriate funds for the rendition of services set forth in this Agreement. This right to cancel is in addition to the rights to terminate the Agreement as set forth in Article 31 of this Agreement.

ARTICLE 4. Indemnity: Subject only to the limitations of the applicable statutes of limitations as contained within applicable federal and state law, Contractor agrees to and shall indemnify, hold harmless, and defend, the Commission, SDHC Limited Liability Companies, the Housing Authority of the City of San Diego, the City of San Diego, and all commissioners, officers, employees, members, council members and agents of each public agency (hereinafter collectively referred to as the “Indemnitees” or individually as an “Indemnitee”) from and against any and all damages, liabilities, claims, fines, fees, costs, penalties, judgments, complaints, causes of action, actions, and demands, including, without limitation, demands arising from injuries to or death of persons (Contractor’s employees included) and damage to real or personal property, or any other losses, damages or expenses, arising directly or indirectly out of the acts, failure to act or negligence of the Contractor, all obligations of this Agreement, or out of the operations conducted by Contractor including those in part due to the negligence of any of the Indemnitees save and except for liabilities, claims, judgments or demands arising through the sole negligence or sole willful misconduct of such Indemnitee or resulting from defects in design furnished by Indemnitee and Contractor will, if requested by Indemnitee, defend any such suits against Indemnitee(s), at the sole cost and expense of Contractor, with counsel of Indemnitee’s choosing. This defense and indemnity provision shall not be interpreted as an agreement allowing the prevailing party in litigation concerning this Agreement to receive attorneys’ fees. Further, therefore, the provisions of Civil Code Section 1717 shall not be applicable to this Agreement.

ARTICLE 5. Governing Law: This Agreement and the obligations of the parties hereunder shall be interpreted, construed and enforced in accordance with the laws of the State of California.

ARTICLE 6. Entire Agreement: This Agreement contains the entire agreement between the parties. No variations, modifications, or changes hereto shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party. All prior negotiations, representations

and/or agreements between the parties relative to the subject matters hereof shall be superseded hereby and of no further force and effect.

ARTICLE 7. Waiver: No consent or waiver, expressed or implied by either party to or of any breach or default by the other in the performance by the other of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of such other party hereunder. Failure on the part of either party to complain of any such act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

ARTICLE 8. Severability: If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by law. The performance to be rendered under this Agreement is divided into 7 parts, generally divided based on the party to whom goods or services are to be provided: (1) Commission; (2) Northern SDHC FNMA LLC; (3) Northern SDHC FHA LLC; (4) Southern SDHC FHA LLC; (5) Central SDHC FNMA LLC; (6) Central SDHC FHA LLC; (7) Belden SDHC FNMA LLC. The breach of this Agreement by Contractor as to the Commission or any one of the SDHC Limited Liability Companies shall not affect the right of the remaining parties to receive goods and/or services pursuant to this Agreement. Furthermore, this Agreement may be severed by Commission and/or one or more of the SDHC Limited Liability Companies, with respect to goods or services provided to the severing party.

ARTICLE 9. Terminology: All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of paragraphs are for convenience only, and neither limits nor amplifies the provisions of the Agreement itself, and all references herein to paragraphs thereof are to this Agreement unless specific reference is made to such paragraphs of another document or instrument.

ARTICLE 10. Binding Agreement: Subject to any restrictions on the assignment of this Agreement or rights thereto, this Agreement shall inure to the benefit of and be binding upon Commission, SDHC Limited Liability Companies, and Contractor and their respective successors, assigns or transferees.

ARTICLE 11. Procedure for Resolving Disputes: In the event of a dispute concerning this Agreement, the same shall be resolved in San Diego Superior Court, Downtown Branch.

ARTICLE 12. Time is of the Essence: Time is of the essence for all Job Order work issued under this Agreement, as per the Job Order schedule submitted by Contractor, on a Job Order by Job Order basis, and agreed upon by the Commission.

ARTICLE 13. Liquidated Damages: As actual damages for any delay in completion are impossible to determine, the Contractor and his sureties shall be liable for and shall pay to the Commission and/or SDHC Limited Liability Companies monies in accordance with the (if any) Liquidated Damages set forth in any issued Job Order as fixed, agreed and liquidated damages for each calendar day of delay until the work is completed and accepted by the Commission and/or SDHC Limited Liability Companies.

ARTICLE 14. Agreement Documents and Order of Precedence: This Agreement between the Commission, SDHC Limited Liability Companies, and the Contractor shall consist of the following component parts. In the event of conflicting provisions of the Agreement exhibits, attachments and component parts, the following order of precedence shall apply:

- A. Any Job Order issued pursuant to this Agreement, including any Addenda, Scope of Work, Plans, Drawings, Technical Specifications, Conditions, Requirements, and Prevailing Wage Requirements attached thereto.
- B. This Agreement Instrument.
- C. Exhibit A “San Diego Housing Commission Special Provisions for National Joint Powers Alliance (NJPA) Job Order Contract (JOC) # CA-XXX.
- D. Exhibit B “Payment and Performance Bond Documents”.
- E. Exhibit C “Release of Lien Form”.
- F. Exhibit D “National Joint Powers Alliance (NJPA) contract number CA-XXX.
- G. Exhibit E “National Joint Powers Alliance (NJPA) Invitation for Bid (IFB) number CA-XXX.

This Agreement instrument, together with the other documents enumerated in Article 14, form the Agreement and are as fully a part of the Agreement as if hereto attached or herein repeated. The various provisions in Addenda shall be construed in the order of preference of the component part of the Agreement which each modifies.

In the event of a conflict between the various documents referenced within Subparagraphs A through G, inclusive, the provisions of the document referenced within subparagraph A shall prevail over the conflicting provisions contained within documents referenced within subparagraphs B through G. In the event that a provision within a document referenced within subparagraph B conflicts with a provision or provisions within the documents referenced within subparagraphs C through G, then the provisions of the documents referenced within subparagraph B shall prevail. In the same fashion the provisions of the document referenced within subparagraph C shall prevail over conflicting provisions of documents contained within subparagraphs D through G. The same conflict provisions shall be applicable to conflicts between provisions within the document referenced in subparagraph D, over the conflicting provisions of the document referenced within subparagraphs E through G. In the same fashion the provisions of the document referenced within subparagraph E shall prevail over conflicting provisions of documents contained within subparagraphs F and G. Finally, the provisions of the document referenced within subparagraph F shall prevail over conflicting provisions of documents contained within subparagraph G.

ARTICLE 15. Drug-Free Workplace: Contractor shall certify to the Commission that it will provide a drug-free workplace and do each of the following:

- A. Publish a statement notifying its employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance as defined in schedules I-V of Section 202

of the Controlled Substance Act (21 U.S.C. 812) is prohibited in Contractor's workplace and specify the actions that will be taken against employees for violation of the prohibition.

B. Establish a drug-free awareness program to inform employees about all of the following:

- 1) The dangers of drug abuse in the workplace.
- 2) The Contractor's policy of maintaining a drug-free workplace.
- 3) Any available drug counseling, rehabilitation and employee assistance programs.
- 4) The penalties that may be imposed upon employees for drug abuse violations.

C. Post the statement required by subdivision A in a prominent place at Contractor's main office and at any job site large enough to necessitate an on-site office.

ARTICLE 16. Equal Opportunity Programs: During the performance of this Agreement, the Contractor agrees as follows:

A. Contractor shall comply with all applicable Equal Opportunity Programs as described in the applicable State and Federal law. Contractor shall submit such forms and information as shall be requested by the Commission from time to time to verify the Contractor's compliance with applicable law.

B. Contractor shall submit to Commission a Certificate of Compliance (attached hereto in Exhibit A) with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable federal and state law and regulations hereinafter enacted.

C. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, gender, disability or national origin. Contractor shall ensure that applicants for employment and employees are treated equally without regard to their race, color, religion, ancestry, gender, disability or national origin.

D. Contractor shall submit to Commission a San Diego County Work Force Report (attached hereto in Exhibit A). If any under representation is found after submission of Contractor's Work Force report, the Commission may request an equal employment opportunity plan (EEOP). An acceptable plan to correct the identified underrepresented categories must be submitted within thirty (30) days. Once the EEOP has been approved by the Commission, the Contractor must adhere to said plan. In case of multi-year contracts, the Contractor will be required to submit annual Work Force reports and EEOP updates as required.

E. Contractor understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in penalties provided for in State and Federal law. In addition, Contractor may, at the election of the Commission, be barred from participating in a Commission project for not less than one (1) year.

ARTICLE 17. Lobbying Provisions: Contractor hereby certifies to the Commission, under penalty of perjury, under the terms of applicable federal law, that at all applicable times before, during and after the term of the Agreement, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any

person for influencing or attempting to influence an officer or employee of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or modification of a Federal contract, grant, loan or cooperative agreement;

B. If any funds other than Federal appropriated funds have been 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, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions;

C. Contractor will require that the above stated language be included in the award documents for all subawards at all tiers, including subcontracts, subgrants, loans, contracts, and cooperative agreements concerning the subject matter of this Agreement; and,

D. Further, Contractor and all subrecipients, at all times, shall certify compliance with the provisions of 31 USC 1352 and any and all terms and conditions of the Byrd Anti-Lobbying Amendment, as amended from time to time.

ARTICLE 18. Necessary Approvals:

In the event that the initial amount of this Agreement exceeds Five Hundred Thousand Dollars (\$500,000.00), this Agreement must be approved by the San Diego Housing Commission Board of Commissioners and the San Diego Housing Authority in order to be binding upon the Commission. In no event shall the Commission be bound by this Agreement, unless and until such approvals are obtained.

ARTICLE 19. Substitution of Securities for Retained Funds: Pursuant to California Public Contract Code Section 22300, Contractor has the option to deposit securities with an escrow agent as a substitute for retention earnings required to be withheld by Commission pursuant to this Agreement. Alternatively, on written request of the Contractor, the Commission shall make payments of the retention earnings directly to an escrow agent. If Contractor exercises either option under this Article 19, Contractor and Commission shall enter into a written escrow agreement with the escrow agent governing the deposit and withdrawal of such securities and/or retention.

ARTICLE 20. Notices: Notices to the parties shall, unless otherwise requested in writing, be sent to the Commission and the Contractor at the addresses given above. Notices to the SDHC Limited Liability Companies may be made in writing to the Commission's attention.

ARTICLE 21. Facsimile Approved by General Counsel: Approval of the form of this Agreement and the attachments, if any, may be in the form of a facsimile approval by General Counsel for the Commission. The approval may be executed in counterpart and attached to the original Agreement.

ARTICLE 22. Status of Contractor: This Agreement calls for the performance of the services of the contractor as an independent contractor. Contractor will not be considered an employee of the Commission or any of the SDHC Limited Liability Companies for any purpose.

ARTICLE 23. Ownership of Materials and Documents: Any and all sketches, drawings and other materials and documents prepared by the Contractor shall be the property of the Commission from the moment of their preparation, and the Contractor shall deliver such materials and documents to the Commission whenever requested to do so by the Commission. However, the Contractor shall have the right to make duplicate copies of such materials and documents for its own files, or for other purposes as may be authorized in writing by the Commission.

ARTICLE 24. Non-Disclosure: The designs, plans, reports, investigations, materials, and documents prepared or acquired by the Contractor pursuant to this Agreement (including any duplicate copies kept by the Contractor) shall not be shown or disclosed to any other public or private person or entity directly or indirectly, except as authorized by the Commission. The Contractor shall not disclose to any other public or private person or entity directly or indirectly, any information regarding the activities of the Commission or any of the SDHC Limited Liability Companies during the term of this Agreement or at any time thereafter except as authorized by the Commission.

ARTICLE 25. Conflict of Interest:

(a) For the duration of this Agreement, the Contractor will not act as a consultant or perform services of any kind for any person or entity which would conflict with the services to be provided herein, without the written consent of the Commission.

(b) A conflict occurs when circumstances, known to the Contractor, place the Commission or SDHC Limited Liability Companies and the Contractor's new client in adverse, hostile or incompatible positions wherein the interests of the Commission, the SDHC Limited Liability Companies, the Housing Authority, or the City of San Diego may be jeopardized. Contractor shall promptly notify the Commission in the event that such a conflict occurs.

(c) In the event of such a conflict, Contractor shall meet and confer with the Commission to agree upon modifications of its relationship with said new client or Commission in order to continue to perform services for said client and/or Commission and/or SDHC Limited Liability Companies without compromising the interests of either. Should no agreement regarding modification be reached, Commission or SDHC Limited Liability Companies may terminate this Agreement with Contractor.

(d) When consent has been given, Contractor shall endeavor to avoid involvement on behalf of said new client which would in any manner undermine the effective performance of services by Contractor for Commission and/or the SDHC Limited Liability Companies. Under no circumstances may Contractor convey, utilize, or permit to be utilized, confidential information gained through its association with Commission and the SDHC Limited Liability Companies for the benefit of any other client.

(e) Contractor agrees to alert every client for whom consent is required, to the existence of this conflict of interest provision and to include language in its agreement with said client which would enable Contractor to comply fully with its terms. This last paragraph shall not apply to existing clients of the Contractor for which Contractor has previously received the Commission's consent.

(f) This Agreement may be unilaterally and immediately terminated by the Commission and/or the SDHC Limited Liability Companies if Contractor employs an individual

who, within twelve months immediately preceding such employment, in their capacity as a Commission employee, participated in negotiations with or otherwise had an influence on the selection of the Contractor.

ARTICLE 26. Correction of Work: The performance of services by the Contractor shall not relieve the Contractor from any obligation to correct any incomplete, inaccurate or defective work at no further cost to the Commission and/or the interested SDHC Limited Liability Companies when such inaccuracies are due to the negligence of the Contractor, provided such work has not been accepted in writing by an authorized representative of the Commission or the interested SDHC Limited Liability Companies.

ARTICLE 27. Cost Records: In accordance with generally accepted accounting principles, the Contractor shall maintain full and complete records of the cost of services performed under this Agreement. Such records shall be open to the inspection of the Commission, the SDHC Limited Liability Companies, and/or to the appropriate federal agencies after reasonable notice, and at reasonable times.

ARTICLE 28. Subcontracting:

(a) No services covered by this Agreement shall be subcontracted without the prior written consent of the Commission and/or the interested SDHC Limited Liability Companies.

(b) In order to obtain consent, Contractor shall submit a list of all potential subcontractors, and a description of work to be performed by each subcontractor, to the Commission. Once this list has been approved, no changes to the list will be allowed except by written approval of the Commission and/or the interested SDHC Limited Liability Companies.

(c) The Contractor shall be as fully responsible to the Commission and/or the SDHC Limited Liability Companies for the acts and omissions of his subcontractors, and of persons directly or indirectly employed by them, as he is for acts and omissions of persons directly employed by him. Commission, in its discretion, may require Contractor to provide Commission with an executed release of all claims against the Commission, the Housing Authority, and the City, arising by virtue of this Agreement, which release shall be provided to Commission concurrently with a request for payment for services provided pursuant to this Agreement and shall include a statement that payments to all subcontractors and suppliers have been made.

(d) Consistent with Presidential Executive Orders 11625, 12138, and 12432, Commission requires Contractor to take positive steps to ensure that small and minority-owned businesses, women's business enterprises, and other individuals and firms located in or owned in substantial part by persons residing in the area of the Commission and/or labor surplus areas are used whenever possible, if the subcontracting of services or work covered by this Agreement is anticipated. Such efforts shall include, but shall not be limited to: (i) including such firms, when qualified, on solicitation mailing lists; (ii) encouraging their participation through direct solicitation of proposals whenever they are a potential source; (iii) dividing total subcontract requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms; (iv) establishing delivery schedules, where the requirement permits, which encourages participation by such firms; and (v) using the services and assistance of the Small Business Commerce.

(i) A small business is defined as a business that is independently owned, not dominant in its field of operation and not an affiliate or subsidiary of a business dominant in its field of operation.

(ii) A minority-owned business is defined as a business which is at least 51% owned by one or more minority groups; or in the case of a publicly owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operation are controlled by one or more such individuals. Minority group members include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.

(iii) A women's business enterprise is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.

(iv) A labor surplus area business is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the U.S. Department of Labor in 20 CFR Part 654, Subpart A, and in the list of labor surplus areas published by the Employment and Training Administration.

ARTICLE 29. Assignability:

(a) The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of the Commission and the interested SDHC Limited Liability Companies. Commission may assign this Agreement or any portion of this Agreement to any entity that is wholly-owned by the Commission by giving written notice of such assignment to Contractor and provided that such assignment shall not change the terms of this Agreement.

(b) Claims for money due or to become due to the Contractor from the Commission and/or the SDHC Limited Liability Companies under this Agreement may be assigned to a bank, trust company, or other financial institutions, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Commission and/or the interested SDHC Limited Liability Companies.

ARTICE 30. Documents and Written Reports:

The Contractor, when preparing any document or written report for or under the direction of the Commission, the SDHC Limited Liability Companies, the Housing Authority, or the City of San Diego, shall comply with the provisions of Government Code Section 7550; to wit,

“(a) Any document or written report prepared for or under the direction of a state or local agency, which is prepared in whole or in part by non-employees of such agency, shall contain the numbers and dollar amounts of such contracts and subcontracts relating to the preparation of such document or written report; provided, however, if the total cost for work performed by non-employees of the agency exceeds five thousand dollars (\$5,000). The contract and subcontract numbers and dollar amounts shall be contained in a separate section of such document or written report.

(b) When multiple documents or written reports are the subject or product of the contract, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.”

ARTICLE 31. Termination: This Agreement may be terminated by the Commission and/or any of the SDHC Limited Liability Companies on thirty (30) days’ written notice to the Contractor, the effective date of cancellation being the 30th day of said written notice with no further action required by either party.

ARTICLE 32. Attorney’s Fees and Costs: If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing Party or Parties shall be entitled to recover reasonable attorneys’ fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

ARTICLE 33. Contract Work Hours and Safety Standards Act: In the event Contractor’s performance of this Agreement entails the use of laborers or mechanics, and the Agreement is for more than the sum of \$100,000, and uses Federal funds, then Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 3701 et seq.) as supplemented by Department of Labor regulations (29 CFR Part 5).

ARTICLE 34. Section 3:

(a) The work to be performed under this Agreement 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 Agreement agree to comply with HUD’s regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this Agreement, the parties to this Agreement 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 the 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 Agreement 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 Agreement for default, and debarment or suspension from future HUD-assisted contracts.

(g) With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment subcontracts shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

ARTICLE 35. Audit Requirements:

Where this Agreement is funded by federal funding, 24 CFR 84.26 requires that nonprofit institutions and institutions of higher education shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996, and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." All entities other than non-profit institutions and institutions of higher education shall be subject to the audit requirements of HUD or the prime recipient as incorporated into the award document.

Where this Agreement is funded by non-federal funds, Contractor shall be subject to audit requirements as set forth in the award document if it exists. Otherwise, Contractor shall adhere to those requirements as set forth in the Single Audit Act Amendments of 1996 and revised OMB Circular A-133.

ARTICLE 36. Prevailing Wage Requirements:

Each Job Order will designate whether federal prevailing wages or state prevailing wages are applicable to each Job Order. Each Job Order shall reference the applicable wage rates and all other applicable language concerning prevailing wages that will be applicable to any specific Job Order. Generally, the following provisions shall also apply, depending upon the source of funding, to wit: either federal or state/ local:

(a) If federal prevailing wage requirements apply, as specified in any Job Order issued pursuant to this Agreement, Contractor shall comply with all applicable federal prevailing wage laws.

(b) If state prevailing wage requirements apply, as specified in any Job Order issued pursuant to

this Agreement, Contractor shall comply with all applicable state prevailing wage laws.

(c) If state prevailing wage requirements apply, as specified in any Job Order issued pursuant to this Agreement, Contractor shall comply with SB-854 with respect to any Job Order submitted on or after March 1, 2015, and/or any Agreement entered into after April 1, 2015:

(i) Labor Code Section 1725.5 requires that Contractor and its subcontractors register and qualify with the State of California Department of Industrial Relations (“DIR”) in order to bid on, be listed in a bid proposal for, or engage in the performance of any contract for a public work. In order to register with the DIR, Contractor and its subcontractors must pay an initial nonrefundable registration fee of \$300, pay an annual renewal fee each July 1 thereafter, and provide the specified information to establish eligibility. Contractor and its subcontractors must register with the DIR at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>.

(ii) Contractor or its subcontractors shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work as defined in Labor Code § 1720, unless currently registered and qualified to perform public work pursuant to Section 1725.5 of the Labor Code. It is not a violation of this section for an unregistered Contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform Public Work pursuant to Labor Code § 1725.5 at the time the contract is awarded. A contract entered into with a Contractor or subcontractors who failed to register as required herein shall be subject to cancellation as set forth in Labor Code § 1771.1.

(iii) The project is subject to compliance monitoring and enforcement by the DIR and Commission, as set forth in Section 1771.4 of the Labor Code. On a weekly basis, the Contractor and its subcontractors shall furnish records, in a format prescribed by the Labor Commission and as specified in Labor Code § 1776, to the Commission and California Labor Commissioner for the following:

- (a) Projects for which the initial contract is awarded on or after April 1, 2015. (Labor Code § 1771.4(c)(2)(B))
- (b) All projects, whether new or ongoing, on or after January 1, 2016. (Labor Code § 1771.4(c)(2)(D))
- (c) Any other ongoing project in which the Labor Commissioner directs the contractors or subcontractors on the project to furnish records. (Labor Code § 1771.4(c)(2)(C))
- (d) Projects that were subject to a requirement to furnish records to the Compliance Monitoring Unit pursuant to Section 16461 of Title 8 of the California Code of Regulations, prior to June 20, 2014. (Labor Code § 1771.4(c)(2)(A))

Contractor shall post job site notices as prescribed by Labor Code § 1771.4(a)(2).

ARTICLE 37. Insurance: Contractor shall not commence work until Contractor has obtained, at its sole cost and expense, all insurance required under this Section. The insurance obtained must be approved by the Commission. Contractor agrees to the following:

(a) Contractor shall provide public liability and property damage insurance in the minimum amount of \$1,000,000 for injury to or death of one or more persons and/or property damage arising

out of a single accident or occurrence, insuring against all liability of the SDHC Limited Liability Companies, the Commission, Contractor, its subcontractors and its authorized representatives, arising out of or in connection with the Contractor's performance of work under this Agreement. The Commission, the SDHC Limited Liability Companies, the Housing Authority of the City of San Diego and the City of San Diego, and each of them, shall each be named as additional insureds on policy endorsements for each Job Order.

(b) Contractor shall purchase and maintain in full force and effect worker's compensation insurance for contractors, subcontractors, employees, and agents in form and amount acceptable to the Commission during the full term of this Agreement.

(c) Contractor shall provide automobile liability insurance on owned and non-owned motor vehicles used in the performance of services as detailed in the Scope of Services, both on site or in connection therewith for a combined single limit for bodily injury and property damage of no less than \$500,000 per occurrence.

(d) All insurance required to be purchased and maintained by the Contractor shall name the Commission, the SDHC Limited Liability Companies, the Housing Authority and the City of San Diego as additional insured's and shall contain cross-liability endorsements.

(e) For any claims arising out of or in connection with Contractor's performance under this Agreement, the insurance required to be purchased and maintained by the Contractor shall be primary and non-contributory to any insurance carried by the SDHC Limited Liability Companies, the Commission, the Housing Authority and/or the City of San Diego.

(f) The Contractor shall furnish to the Commission Certificates of Insurance evidencing the insurance carried in compliance with this Section. This Certificate shall contain a provision that at least thirty days prior written notice will be given to the Commission and the SDHC Limited Liability Companies in the event of cancellation, reduction, or nonrenewal of the insurance.

(g) All insurance required to be purchased and maintained by the Contractor shall be endorsed with a waiver of subrogation. Contractor's insurers, in their endorsements, agree to waive all rights of subrogation against the SDHC Limited Liability Companies, the Commission, the Housing Authority, the City of San Diego, and their employees and agents for losses paid by Contractor's insurers that arise out of or in connection with Contractor's performance under this Agreement.

ARTICLE 38. Contract Governed by Laws of State of California: This Agreement and its performance and all suits and special proceedings under this Agreement shall be construed in accordance with the laws of the State of California. In any action, special proceeding, or other proceeding that may be brought arising out of, under, or because of this Agreement, the laws of the State of California shall be applicable and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which the action or special proceeding may be instituted.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in original counterparts as of the day and year first above written.

Contractor:

COMPANY NAME

By: _____

Date: _____

Commission:
SAN DIEGO HOUSING COMMISSION

Approved as to Form:
Christensen & Spath LLP

By: _____
Richard C. Gentry
President & Chief Executive Officer

By: _____
Charles B. Christensen
General Counsel
San Diego Housing Commission

Date: _____

Date: _____

Belden SDHC FNMA LLC, a California
limited liability company
By: San Diego Housing Commission, a public
agency
Its: Managing Member

Central SDHC FHA LLC, a California
limited liability company
By: San Diego Housing Commission, a
public agency
Its: Managing Member

By: _____
Richard C. Gentry
President & Chief Executive Officer

By: _____
Richard C. Gentry
President & Chief Executive Officer

Central SDHC FNMA LLC, a California
limited liability company
By: San Diego Housing Commission, a public
agency
Its: Managing Member

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limited liability company
By: San Diego Housing Commission, a
public agency
Its: Managing Member

By: _____
Richard C. Gentry
President & Chief Executive Officer

By: _____
Richard C. Gentry
President & Chief Executive Officer

Northern SDHC FNMA LLC, a California
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By: San Diego Housing Commission, a public
agency
Its: Managing Member

By: _____
Richard C. Gentry
President & Chief Executive Officer

Southern SDHC FHA LLC, a California
limited liability company
By: San Diego Housing Commission, a
public agency
Its: Managing Member

By: _____
Richard C. Gentry
President & Chief Executive Officer

EXHIBIT A
SAN DIEGO HOUSING COMMISSION SPECIAL PROVISIONS
FOR
NATIONAL JOINT POWERS ALLIANCE (NJPA) JOB ORDER CONTRACT (JOC)
NUMBER CA-xxx

[Attached]

EXHIBIT B
PAYMENT AND PERFORMANCE BOND DOCUMENT

For every Job Order issued by the Commission and/or interested SDHC Limited Liability Companies to the Contractor pursuant to this Agreement, in an amount greater than \$100,000, the Contractor shall be required to provide the Commission a Payment Bond and a Performance Bond. Each bond shall be in the amount of 100% of the total price of the Job Order.

**EXHIBIT C
RELEASE OF LIEN**

KNOW ALL MEN BY THESE PRESENTS:

1. The undersigned certifies that all work required under this Agreement will be performed in accordance with the terms thereof, and that, provided the undersigned is paid in accordance with the terms of this Agreement, there will be no unpaid claims for materials, supplies or equipment and no claims of laborers or mechanics for unpaid wages arising out of the performance of this Agreement.
2. That, in consideration of and conditioned upon the payment in full of the amount of this Agreement, as such amount may be adjusted as provided in the Agreement, the undersigned does hereby release the San Diego Housing Commission and the SDHC Limited Liability Companies from any and all claims arising under or by virtue of this Agreement, provided, however, the wrongful withholding of funds by the San Diego Housing Commission or the SDHC Limited Liability Companies shall not effect a release as to the funds wrongfully held.

IN WITNESS WHEREOF, the undersigned has signed and sealed this instrument this
day of _____, 20_____.

BY _____
(Contractor)

(Seal)

EXHIBIT D
NATIONAL JOINT POWERS ALLIANCE (NJPA) CONTRACT NUMBER
CA-xxx
[Attached]

EXHIBIT E

**NATIONAL JOINT POWERS ALLIANCE (NJPA) INVITATION FOR BID (IFB)
NUMBER CA-xxx**

[Incorporated and Applicable by Reference]