



Housing Authority of the County of Merced

**REQUEST FOR QUALIFICATIONS
RFQ #2026-35**

As-Needed Architect and Engineering Services

**DUE DATE: Thursday, September 24, 2026 by 4:00 P.M.
Pacific Standard Time (PST)**

405 U Street, Merced, CA. 95341
Telephone: (209) 722-3501 ext. 147
Email: evelync@merced-pha.com

REQUEST FOR QUALIFICATIONS (RFQ) #2026-35

As-Needed Architect and Engineering Services

Table of Contents

Section	Title	Page
1	INTRODUCTION	3
2	STATEMENT OF SERVICES	4
3	SUBMISSION REQUIREMENTS	4
4	SUPPLEMENTAL INSTRUCTIONS TO RESPONDENTS	6
5	RIGHT TO PROTEST	7
6	AUTHORITY'S RESERVATION OF RIGHTS	8
7	BUILD AMERICA, BUY AMERICA REQUIREMENTS	9
8	EVALUATION/CONTRACT AWARD	10
9	EVALUATION CRITERIA	10
10	SUMMARY OF EVALUATION CRITERIA	11
	ATTACHMENTS	
	1. Scope of Services	
	2. Submittal Instructions & Requirements	
	3. Sealed Proposal Cost Form	
	4. Profile of Firm Form	
	5. Form of Non-Collusive Affidavit	
	6. Addendum/Addenda Acknowledgement	
	7. Contractor/Sub-Contractor Information with Business Enterprise Verification	
	8. Section 3 Certification for Business Concerns Seeking Business Preference	
	9. HUD-5369-B: Instructions to Offerors, Non-Construction	
	10. HUD-5369-C: Certifications and Representations of Offerors – Non-Construction Contract	
	11. HUD-5370-C: General Conditions for Non- Construction Contracts, Section I (With or Without Maintenance Work)	
	12. HUD-51915: Model Form of Agreement Between Owner and Design Professional- Must be signed.	
	13. Authority Insurance Requirements for Consultants	

SECTION I: INTRODUCTION:

The Housing Authority of the County of Merced (Authority) is soliciting quotes from interested, qualified, insured, registered, entities to provide professional architectural and engineering services, on an as needed basis, and as further detailed herein specializing in water-retaining structures (Waste Water Systems, Ponds, Tanks, Reservoirs).

The Authority is soliciting this Request for Qualifications to award a contract to a firm(s) to provide architectural and engineering services (A/E) for various projects. The Authority reserves the right to complete an award to one firm only or to complete an award to multiple firms. If an award is made to more than one firm, such awards will be based on the Authority's opinion that a firm can offer the Authority greater value for a certain service. Currently, the Authority has an immediate need for work pertaining to wastewater pond upgrades. It is the intention of the Authority to execute an initial one-year (1-year) contract with two (2) two-year (2-year) optional extensions.

Respondent will document past performance of providing the required services by submitting all required documentation as listed on "SUBMITTAL INSTRUCTIONS & REQUIREMENTS" Attachment 2. Evaluation and contract award will be made to the proposer(s) that is best qualified to provide the services described in this RFQ based upon the evaluation criteria listed within.

This RFQ is being issued, as well any addenda, by the Authority. The contact person for the Authority is:

Evelyn Chavira, Director of Procurement
405 U Street, Merced, CA. 95341
Telephone: (209) 386-4147
Email: evelync@merced-pha.com

Due Date for Submittals: Thursday, September 24, by 4:00 P.M.

- 1. Contact with Authority staff, Board Members and/or Residents:** Under no circumstances may any Authority Board Member or any Authority staff member other than the contact person specified within this RFQ be contacted during this RFQ process by any entity intending to submit a response to this RFQ. Failure to comply with this request will result in disqualification. All questions shall be in writing and directed to the contact person as listed within this solicitation.
- 2. Interpretations/Questions:** During the period between issuance of this RFQ and the submittal due date, no oral interpretation of the RFQ's requirements will be given to any prospective respondent. Request for interpretation must be made, in writing, and submitted and received no later than **Wednesday, September 16, 2026 at 10:00 A.M. PST,** questions received after this time

will not be responded to. Interpretations and/or questions must be submitted to Evelyn Chavira via: email: evelync@merced-pha.com or Fax: (209) 722-0106.

3. **Addendum and Update Procedures for the RFQ:** During the period of advertisement for this RFQ, the Authority may wish to amend, add to or delete from, the contents of this RFQ. In such situations, the Authority will issue an Addendum to the RFQ setting forth the nature of the modification(s) and post the notice on the Authority website www.merced-pha.com and the Public Purchase website www.publicpurchase.com. Additionally, The Authority will email, fax or send via regular U.S. Postal Service Mail, upon written request, to any interested parties. It shall be the responsibility of each Respondent to ensure that they have any/all Addendum relative to this RFQ.

SECTION 2 – STATEMENT OF SERVICES:

See Attachment #1-Scope of Services/Deliverables.

SECTION 3 –SUBMISSION REQUIREMENTS:

1. Submittals may be submitted in person, by mail, or by other delivery service (i.e. FedEx, California Overnight, United Postal Services (UPS), etc.). RFQ submittals must be delivered to the Authority at the Main Office, 405 U Street, Merced, CA. 95341, by or *prior to* **Thursday, September 24, 2026 at 4:00 P.M. (PST)**
2. It is the responsibility of the Respondent to ensure on-time delivery. RFQ submittals will address the Scope of work requirements and be submitted with one (1) original including wet signatures and three (3) additional copies. The instructions below provide guidance on what the RFQ submittals will contain and how it will be organized.
3. RFQ submittals will be assembled in the order described below and as outlined in "Submittal Instructions and Requirements" (**Attachment 2**) and delivered in a sealed envelope or box clearly marked with the respondents/firms name and include the following:

REQUEST FOR QUALIFICATIONS #2026-35 As-Needed Architect and Engineering Services

- A. Late submittals will not be reviewed or considered for award. Late submittals will be filed and kept for procurement records. For any questions you may contact Evelyn Chavira at 209-386-4147.
- B. Facsimile copies or emails will not be accepted. All RFQ submittals will become the property of the Authority upon submission.
- C. All RFQ submittals must be submitted in accordance with the conditions and instructions provided herein.
- D. All RFQ submittals must remain open for acceptance for 90 days from the due date.

- E. The RFQ submittals shall be bound in a manner that the Authority can easily remove the binding or remove pages to make copies, then easily return the submittal to its original condition, please don't staple.
- F. All RFQ submittals shall be submitted in an 8½" x 11" format, preferably in a 3-ring binder or similar format.
- G. Larger size pages or inserts may be used provided they fold into 8 ½" x 11".
- H. The front cover of the submittal should bear the name and number of the RFQ, date of submittal, Respondent's name(s), address, phone & fax numbers and email address(es).
- I. Provide all required certifications and HUD forms, and all other required documents as outlined within this RFQ. All forms that require a signature or initials must bear an original signature or initial, on at least one (1) submittal.
- J. All copies of the submittal must be identical in content and organization.
- K. The RFQ submittals, including copies, shall be organized into sections and tabbed for ease of review according to the following format:

TAB 1	• Submittal Instructions & Requirements (Attachment 2) • Sealed Proposal Cost Form (Attachment 3)
TAB 2	• Profile of Firm Form (Attachment 4) • Form of Non-Collusive Affidavit (Attachment 5) • Addendum/Addenda Acknowledgement form (Attachment 6)
TAB 3	• Architect/Engineer Project Experience: Convey capacity to meet all requirements of RFQ • Managerial Capacity (with organizational chart if possible) • Financial Viability including declared earnings for past 3 months
TAB 4	• Demonstrated Successful Past Performance • Three (3) references, include Company/Agency name, mailing address, contact person, telephone and email address and brief description of services performed
TAB 5	• Contractor/Sub-Contractor Information with Business Enterprise Verification (Attachment 7) • Section 3 Certification for Business Concerns seeking Business Preference (Attachment 8, must be completed or marked N/A)
TAB 6	• HUD-5369-C: Certifications and Representations of Offerors – Non-Construction Contract (Attachment 10) • HUD-51915: Model Form of Agreement between Owner and Design Professional (Attachment 11)
TAB 7	• OPTIONAL: • Brochures or other material that may be helpful in evaluating your firm may be included in this tab • Other Information

Non-Responsive RFQ submittals: All RFQ submittals will be reviewed for responsiveness to the material requirements of the solicitation. A submittal that is not materially responsive will not be eligible for further consideration for award of the Contract, and the respondent shall receive notice of the non-award of its submittal.

SECTION 4 - SUPPLEMENTAL INSTRUCTIONS TO RESPONDENTS:

1. **Acceptance of Submittal:** RFQ submittals must be signed and received, in completed form, at the Authority prior to the submittal due date and time. RFQ submittals submitted after the designated due date and time will not be accepted for any reason and will be returned unopened to the sender.
2. **Time for Reviewing RFQ submittals:** RFQ submittals received prior to the due date and time will be securely kept and remain unopened. RFQ submittals received after the due date and time will not be considered. All RFQ submittals properly received will be evaluated by an Authority Evaluation Committee appointed by the Executive Director.
3. **Withdrawal of RFQ submittals:** RFQ submittals may be withdrawn by written notice or facsimile transmission received at any time prior to award and provided that withdrawal request has the signature of the authorized representative.
4. **Award of Contract(s):** Contract shall be awarded to the Respondent whose submittal best meets the needs of the Authority. The Respondent to whom award is made will be notified at the earliest practical date.
5. **HUD Debarment and Suspension List:** Contract shall not be awarded to a contractor which has been debarred, suspended or otherwise ineligible for participation, in accordance with Federal regulations (24 CFR, part 24 and 24 CRF, part 85) and in accordance to State of California law.
6. **No Claim Against the Authority:** A Respondent shall not obtain, by submitting a submittal in response to this RFQ, any claim against the Authority or the Authority's property by reason of all or any part of any of the following: any aspect of this RFQ; the selection process; the rejection of any or all offers; the acceptance of any offer; entering into any agreements or the failure to enter into any agreements; any statement, representations, acts or omissions of the Authority or any person or entity on its behalf; the exercise of any discretion set forth in or concerning any of the foregoing; and any other matters arising out of the foregoing. The Authority shall not incur any costs nor provide reimbursement for any preparation of response to this solicitation.
7. **Best Available Data:** All information contained in this RFQ is the best data available to the Authority at the time the RFQ was prepared. The information given in the RFQ is not intended as representation having binding legal effect. This information is furnished for the convenience of the Respondents and the Authority assumes no liability for any errors or omissions.

8. **Licenses:** The Respondents will be required to obtain and maintain all required licenses necessary to conduct business in City of Merced, if required, and the State of California. All licenses must be kept up-to-date for the duration of this contract. Copies of all required licenses must be submitted at or prior to contract signing.
9. **Respondent Responsibilities:** Each Respondent is presumed by the Authority to have thoroughly studied this RFQ and is familiar with the contents, locations, nature of request, etc. covered by the RFQ. Any failure to completely understand this RFQ is the responsibility of the Respondent.
10. **Release of Information:** Information submitted in response to this RFQ will not be released by the Authority during the submittal evaluation process or prior to a contract award.
11. **Proprietary Information:** If a respondent does not desire certain proprietary information in their response disclosed, the respondent is required to identify all propriety information in the response, which identification shall be submitted concurrently with the response. If the respondent fails to identify proprietary information, it agrees by submission of its response that those sections shall be deemed nonproprietary and may be made available upon public request after a contract award.
12. **Indemnification:** Contractor shall indemnify and defend the Authority, its officers, officials, employees, volunteers, agents and assigns and hold it harmless from and against any and all claims, demands, liability, damage, costs, expenses, awards, fines, judgements and attorney fees arising out of or in any way connected with the performance of this Contract. Indemnity shall apply to any acts, omissions, willful misconduct, or negligent conduct, whether active or passive, unless liability is caused solely by the negligent or willful misconduct of the Authority. Contractor will, on request and at its own expense, defend any action, suit or proceeding arising hereunder and shall reimburse and pay the Authority for any loss, cost, damage or expense, including attorney fees (including those of in-house counsel) suffered by it hereunder.

SECTION 5 – RIGHT TO PROTEST:

1. **Rights:** Any prospective or actual proposer or contractor, who is allegedly aggrieved in connection with the solicitation of a submittal or award of a contract, shall have the right to protest. Such right only applies to serious violation of the Authority procurement policy. Any protest of an award or proposed award must be filed in writing within ten (10) days from the date of the official award notification and must be received by 5:00 pm
2. **Definition:** An alleged aggrieved “protestant” is a prospective proposer or proposers who feels that he/she/they has/have been treated inequitably by

the Authority and wishes the Authority to correct the alleged inequitable condition or situation.

3. **Eligibility:** To be eligible to file a protest with the Authority pertaining to an RFQ or contract, the alleged aggrieved protestant must have been involved in the RFQ process in some manner as a perspective proposer (i.e. recipient to the RFQ documents) when the alleged situation occurred. The Authority has no obligation to consider a protest filed by any party that does not meet these criteria.
4. **Procedure:** Any actual or prospective contractor may protest the solicitation or award of a contract for material violation of the Authority's procurement policy. Any protest against an Authority solicitation must be received before the due date for receipt of RFQ submittals and any protest against the award of a contract must be received within ten (10) calendar days after contract award or the protest will not be considered.
 - A. All protests must be in writing and submitted to the Contracting Officer, Executive Director, or his/her designee for a written decision.
 - B. The Contracting Officer, Executive Director, or his/her designee will review and issue a written decision and findings to the Protester or Protesters within thirty (30) business days from receipt of the written protest.
 - C. This decision is then appealable to the Authority Board of Commissioners within five (5) business days of receipt of the written decision.
 - D. Appeals which are not filed in a timely manner will not be considered and the decision will become final.
 - E. All appeals will be appropriately marked and sent to the address as listed below:

APPEAL OF RFQ # 2026-35 As-Needed Architect and Engineering Services
Housing Authority of the County of Merced
ATTN: Executive Director
405 U Street, Merced, CA. 95341

SECTION 6 - AUTHORITY'S RESERVATION OF RIGHTS:

1. The Authority reserves the right to accept or reject any or all RFQ submittals, to take exception to these RFQ specifications or to waive any formalities or to terminate the RFQ process at any time, if deemed by the Authority to be in its best interests.
2. The Authority reserves the right to reject and not consider any submittal that does not meet the requirements of this RFQ, including by not necessarily limited to, incomplete submittal and/or RFQ submittals offering alternate or non-requested services. Respondents may be excluded from

further considerations for failure to fully comply with the specifications of this RFQ.

3. The Authority reserves the right not to award a contract pursuant to this RFQ.
4. The Authority reserves the right to reject the submittal of any Respondents who have previously failed to perform properly or to complete on time, a contract of similar nature; or who is not in a position to perform the contract.
5. The Authority reserves the right to terminate a contract awarded pursuant to this RFQ, at any time for its convenience upon 10 days written notice to the successful Respondent(s).
6. The Authority reserves the right to determine the days, hours and locations that the successful Respondent(s) shall provide the services called for in this RFQ.
7. The Authority reserves the right to retain all RFQ submittals submitted and not to permit withdrawal for a period of 60 days subsequent to the deadline for receiving RFQ submittals without the written consent of the Authority's Executive Director.
8. The Authority reserves the right to negotiate the fees proposed by the Respondent entity.
9. The Authority shall have no obligation to compensate any Respondent for any costs incurred in responding to this RFQ.
10. The Authority shall reserve the right to at any time during the RFQ or contract process prohibit any further participation by a Respondent or reject any submittal submitted that does not conform to any of the requirements detailed herein.

SECTION 7 – BUILD AMERICA, BUY AMERICA REQUIREMENTS:

The Build America, Buy America (BABA) Act was enacted on November 15, 2021, as part of the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. No. 117-58) also known as the Bipartisan Infrastructure Law. BABA establishes a domestic content procurement preference known as the "Buy America Preference" (BAP) for Federal infrastructure spending. The BAP requires that all iron, steel, manufactured products, and construction materials used in infrastructure projects funded with Federal financial assistance must be produced in the United States, Per the Community and Development Notice: CPD-2023-12. In accordance with these guidelines, the Authority must comply with the requirements of the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, and as applicable to this project. Pursuant to Title 2,

CFR Chapter 1, Part 184, materials used are subject to BABA requirements, unless exempted by a waiver. Contractor must make every effort to ensure any applicable material used for this project is produced in the United States according to the BABA guidelines.

SECTION 8 – EVALUATION/CONTRACT AWARD:

RFQ submittals received in response to this solicitation shall be evaluated based on the evaluation factors set forth in the RFQ. Factors not specified in the RFQ shall not be considered. Contract shall be awarded to the responsible firm whose qualifications best meets the needs of the Authority and is most advantageous to the Authority.

1. RFQ submittals will be evaluated and scored. Scoring will be based on predetermined qualification criteria, the available points associated with each area of consideration are outlined in "Section 9– Evaluation Criteria".
2. If, after the initial evaluation of RFQ submittals, there is a clear winner a contract may be awarded at that time. If further consideration is needed negotiations/discussion, may be entered into.
3. The Authority reserves the right to make no award or decline to enter into negotiations should it believe that no Respondents to this RFQ will be capable of delivering the necessary level of services.
4. The Evaluation Committee will evaluate the merits of RFQ submittals received in accordance with the evaluation factors stated in the RFQ and formulate a recommendation. However, while a numerical rating system may be used to assist the Evaluation Committee in selecting the competitive range (if necessary) and making an award recommendation decision, the award decision is ultimately a business decision that will reflect an integrated assessment of the relative merits of the submittal using the factors and their relative weights disclosed in the RFQ.

SECTION 9 – EVALUATION CRITERIA:

The following factors will be utilized by the Authority to evaluate each submittal received. Award of points for each listed factor will be based upon the detailed information that the firm submits within their submittal.

Evaluation #	Maximum Points	Evaluation Criteria
1	25	Architect/Engineer Project Experience: evidence of firm's capacity to perform this type of work, including, but not limited to, the number of years providing services for other similar sized entities with similar scope of work; similar projects or issues relative to municipal, governmental, redevelopment and/or housing authorities.

2	25	Managerial Capacity: Include staffing of key positions, methods of assigning work, and procedures for maintaining level of service, etc., Organization chart
3	25	Demonstrated Successful Past Performance: Documented track record of successfully completing projects substantially similar to that required by this solicitation and verifiable by reference checks. Include years of experience with wastewater/pond projects.
4	25	Includes Three (3) References: Company/Agency name, mailing address, contact person, telephone and email address and brief description of services performed.
5	5	Preference #1: Contractor/Sub-Contractor Information with Business Enterprise Verification: Provided to those Respondents who provide documentation of Small Business Enterprise, Disadvantaged Business Enterprise Minority-owned Business and/or Women/s Business Enterprise (SBE/DBE/MBE/WBE) Preference.
6	5	Preference #2: "Section 3 Certification for Business Concerns Seeking Section 3 Business Preference in Contracting and Demonstration of Capability" Participation: Provided to those Respondents who demonstrate through their submittals that the Authority's stated participation goals, in terms of Section 3 business enterprise contracting and Section 3 resident employment and training will be met.
	110	Maximum Points Possible

SECTION 10 – SUMMARY OF EVALUATION CRITERIA:

Evaluation Criteria

1. Capacity to Meet All Requirements	25 Points
2. Managerial Capacity	25 Points
3. Demonstrated Successful Past Performance	25 Points
4. Includes three (3) References	25 Points
Total	100 Points

Additional Points Possible

5. Business Enterprise Verification SBE/DBE/MBE/WBE	5 Points
6. Section 3 Certification for Business Concerns Participation	5 Points
Total	10 Points

MAXIMUM POINTS POSSIBLE:

110 Points

Architect/Engineer Project Experience: (25 Points Maximum):

(18-25) Submittal demonstrates a strong capacity to meet all requirements specified in the RFQ.

- (12-17) Submittal demonstrates a solid capacity to meet all of the requirements specified in the RFQ.
- (6-11) Submittal demonstrates fair capacity to meet all requirements specified in the RFQ
- (0-5) Submittal does not demonstrate capacity to meet all requirements specified in the RFQ.

Managerial Capacity: (20 Points Maximum):

- (18-25) Submittal demonstrates excellent staffing levels, with appropriate qualifications. Demonstrates ability to maintain staffing levels and appropriate equipment/materials. RFQ includes an excellent Management Plan and reasonable schedule. (Over 10 years of experience)
- (12-17) Submittal demonstrates sufficient staffing levels, with appropriate qualifications. Appears to have the ability to maintain staffing levels and appropriate equipment/materials. Management Plan is good. (5-10 years of experience)
- (6-11) Submittal demonstrates fair staffing levels, with fair qualifications. May have the ability to maintain staffing levels and appropriate equipment/materials. Management Plan is fair. (Less than 5 years)
- (0-5) Submittal does not demonstrate sufficient staffing levels, with appropriate qualifications. May not have the ability to maintain staffing levels and appropriate equipment/materials for the work required. Management Plan is not adequate.

Demonstrated Successful Past Performance: (25 Points Maximum):

- (18-25) Submittal demonstrates a complete and comprehensive track record of successfully completing projects substantially similar and provided adequate list of verifiable references.
- (12-17) Submittal demonstrates a good track record of successfully completing projects substantially similar to that required and provided adequate list of verifiable references.
- (6-11) Submittal demonstrates a fair track record of successfully completing projects substantially similar and provided a fair list of verifiable references.
- (0-5) Submittal does not demonstrate an adequate track record of successfully completing projects substantially similar and does not include an adequate list of verifiable references.

Includes Three (3) References: (25 Points Maximum):

- (21-25) Respondent lists three (3) previous clients with detailed projects and all references give excellent response on quality of service
- (15-20) Respondent lists three (3) previous clients with no details on projects and references do not have a favorable response on quality of service or do not respond to contact
- (10-15) Respondent lists two (2) previous clients with detailed projects and all references give excellent response on quality of service
- (5-10) Respondent lists two (2) previous clients with no details on projects and references do not have a favorable response on quality of service or do not respond to contact.
- (0-5) Respondent lists one (1) previous client with detailed projects and all references give excellent response on quality of service.

Additional Points Possible (10 Points Maximum):

- (5) Preference #1: SBE/DBE/MBE/WBE Preference.
- (5) Preference #2: Section 3 Certification for Business Concerns Seeking Section 3 Business Preference in Contracting and Demonstration of Capability

Scope of Services:

The Housing Authority of the County of Merced (Authority) is soliciting quotes from interested, qualified, licensed, insured, and registered, entities to provide professional architectural and engineering services, on an as needed basis, and as further detailed herein specializing in water-retaining structures (Waste Water Systems, Ponds, Tanks, Reservoirs).

The selected A/E firm(s) will provide an indefinite quantity of professional, Architectural and Engineering services on an as-needed basis as requested for the duration of the awarded contract. It is the intention of the Authority to execute an initial one-year (1-year) contract with two (2) two-year (2-year) optional extensions. The Authority reserves the right to complete an award to one firm only or to complete an award to multiple firms.

An initial sample "scope of deliverables" follows. Procurement of said services shall be in accordance with State and Federal regulations applicable to Community Development Block Grant (CDBG) Program Projects. Firms interested in being considered for this project will submit a thorough statement of qualifications showcasing their past performance on architectural and engineering projects with an emphasis on wastewater systems and ponds.

I. General Specifications:

Site planning: Structural, mechanical, electrical and civil engineering; Landscaping; Cost estimating Construction contract administration; and Construction oversight.

Phases of Services: Schematic Design/Preliminary Study; Design Development Phase; Bidding, Construction and Contract Document Phase; Bidding and Award Phase; Construction Phase; and Post Completion/Warranty Phase

II. Project Request Negotiations:

Should more than one (1) firm be awarded a contract, When the Authority has need of A/E work, the Authority staff overseeing the project will contact the 1st-ranked awarded firm to ascertain as to whether or not that firm is available to do the work within the reasonable time frame the Authority has established for that work; if the firm is available within the Authority's requirements, the Authority shall then, in conformance with all procurement requirements, attempt to negotiate a reasonable cost with the available firm. If such negotiation cannot be successfully concluded within ten (10) business days, the Authority shall retain the right to suspend negotiations with that firm and proceed to the 2nd-ranked firm. PLEASE NOTE: Once the Authority has ended negotiations with the 1st-ranked firm, the Authority Shall Not again enter into negotiations with that firm pertaining to the current project request (however, this shall not cause that firm to lose its place as the 1st-ranked firm for any following project requests). If, as detailed within the preceding Section, the 2nd-ranked awarded firm is not available or the Authority is not able to

successfully reach a negotiated cost with the 2nd-ranked firm, the Authority will proceed to the next-ranked awarded firm and repeat the same negotiation process. This process may be repeated by the Authority with ensuing ranked firms until the Authority has successfully negotiated a reasonable cost for current requested project.

III. HUD Form 51915:

Each Respondent must review the "Model Form of Agreement between Owner and Design Professional" HUD-51915 included as Attachment 11. Each Respondent must sign the professional service contract and return it to Authority as part of its submittal. By signing a Model Form of Agreement contract, if the Authority accepts and signs the Agreement, the Agreement shall be binding on both parties. Any and all services performed must comply with all applicable Federal regulations including, but not limited to, Handicap Accessibility (Section 504), Americans with Disabilities Act (ADA), Uniform Federal Accessibility Standards (UFAS), Davis-Bacon wage requirements, Environmental requirements, Build America/Buy America Act (BABA), and Federal procurement requirements. In addition, all services must be performed in compliance with applicable laws, regulations and local building code requirements and ordinances.

IV. Non-Responsive RFQ submittals:

All RFQ submittals will be reviewed for responsiveness to the material requirements of the solicitation. A submittal that is not materially responsive will not be eligible for further consideration for award of the Contract, and the Respondent shall receive notice of the non-award of its submittal.

SCOPE OF DELIVERABLES:

Pond Evaluation for Compliance and Emergency Preparedness: Authority Migrant Center

Contractor will determine what upgrades will be needed for continued compliance and emergency preparedness. Contractor will create and submit a report on all found issues to the Authority, with recommendations on what is needed to bring the issues up to code to increase ability for ponds to run from existing 6-month usage to a year-round continuous usage. In addition, the contractor will adhere to general industry accepted practices and comply with all federal, state, and local building codes, laws, regulations, and ordinances that bear on the performance of the work. It is the sole responsibility of the contractor to examine and inspect the wastewater pond in its entirety to provide a complete and accurate proposal for necessary repairs to ensure compliance with current regulations and to support emergency use of the center in case of natural disasters.

The SOW is not all-inclusive. This scope is an example of current needs and may be expanded on after successful award of Qualifications contract and awarded contractors recommendations based on evaluation of pond.

I. Description of Properties

1. The Migrant Center is comprised of forty-nine (49) residential rental units, two (2) staff units, one (1) daycare center and an on-site Laundry facility. The Center operates for approximately one hundred and eighty (180) days out of the year. Additionally, the Center has one (1) fully operable pond and two/three (2/3) non-operating ponds. See map attachment 2.

II. Scope of Work

In General, the Contractor will conduct a detailed site visit at the Migrant Center and inspect the existing wastewater pond system.

1. On-site evaluation of existing pond system:

- A. Contractor will conduct a detailed site visit and inspection of ponds on site, focusing on physical integrity, signs of wear or damage, and capacity capability. This will include any ponds not currently in use
- B. Review of the Migrant Centers wastewater pond system, this will include any ponds not currently in use. Contractor will analyze with consideration of what requirements are needed for compliance with:
 - 1) Existing codes, or
 - 2) Maintaining compliance, and
 - 3) Evaluating whether ponds are flood resilient and overall pond resilience for emergency situations with a report, and
 - 4) Creating a detailed report that will allow creation of a scope of work that will include all work, material, supporting components, etc., that will be needed in order to put into operation a second, fully operable and compliant pond at the Migrant Center.

- C. Identify and rank potential risks, including structural integrity concerns, safety hazards, etc., providing a prioritized list of improvements to mitigate these risks. This will include any ponds not currently in use.
- D. Other related and/or miscellaneous work, as needed.
- 2. Plant assessment monitoring, including but not limited to:
 - A. Assess common issues, e.g., overflow risk, algae, debris buildup, pest issues, fencing/signage, and damage caused by local or foreign animals.
 - B. Contractor will create a maintenance plan for future monitoring of the pond system plant environment.
 - C. Analyze and evaluate the pond's performance in handling nutrient levels, oxygen depletion, and other wastewater-related risks.
- 3. Recommendations for required monitoring and/or other reports to the regulating agency/agencies.
 - A. Review and assess compliance with local, state, and federal environmental regulations regarding wastewater management, safety standards, and operational requirements.
 - B. Contractor will provide a prioritized list of improvements for both immediate and long-term solutions. Improvement list shall include recommendations for enhancing flood protections, optimizing nutrient management, and improving overall pond resilience to emergencies.
 - C. Evaluate maintenance practices, including debris control and erosion damage.
 - D. Assess and/or recommend influent flow meter calibration practices, create a plan as-needed.
 - E. Contractor will create a maintenance plan for future monitoring of the pond system.
 - F. Analyze the ponds design and operational efficiency, considering factors such as current inflow, outflow, treatment capacity, and seasonal changes.
 - G. Provide a sample of a monthly monitoring analysis of each system to the Authority.
- 4. Estimated Costs Reports:
 - A. The contractor will provide a detailed cost estimate, cost estimate will include:
 - 1) Recommended improvements, urgency
 - 2) Recommended improvements, safety
 - 3) Recommended improvements, pond performance
 - 4) Recommended improvements, design evaluation
 - B. Contractor will submit a finalized report including a comprehensive report of all of the above-mentioned items, including background information, existing conditions, design evaluations, recommended improvements, and costs.

III. General Specifications

- 1. Generally accepted industry standards must be adhered to and in a workmanlike manner.

2. Contractor will be required and responsible for obtaining, maintaining, and paying for all city and/or county business licenses and related connection or other fees. Copies of licenses must be submitted to the Authority prior to issuance of the Notice to Proceed. Failure to maintain these licenses in a current status during the term of the contract will constitute a material breach thereof.
3. It is the sole responsibility of the contractor to obtain permits as needed. If Contractor is unsure if permits are needed or Contractor needs additional information, the Contractor MUST visit the County of Merced Building and Safety Division office at 2222 M Street, Merced, CA., or call (209)385-7477.
4. Contractor will be required and responsible for paying any and all related and required fees and costs, including but not limited to, impact fees, architectural and/or engineering costs, environmental testing costs, etc., associated with the work.
5. All work must be performed according to industry standards, procedures, and methods normally accepted in the industry and in compliance with all current federal, state, and local laws, codes, ordinances, and regulations. If such compliance is impossible for reasons beyond its control, the Contractor will immediately notify the Authority of that fact and the reasons therefore. Additional costs by the Contractor cannot be assumed and must be pre-approved by the Authority prior to performance of work.
6. Any removal of material not approved by the Authority will be at the Contractor's sole cost for its lawful disposal, replacement, labor to install, as well as any design costs, fees, and charges related to its approval.
7. Contractor will be responsible for the repair and/or replacement of any damaged areas made in the course of the work being performed. Damaged areas include, but are not limited to, existing, adjacent, and/or adjoining structures, walls, roofs, ceilings, floors, fences, and/or landscape. All repairs and/or patches must match existing materials and must meet industry standards. All repairs and/or patches must be compatible with the design and quality of the existing, adjacent, and/or adjoining materials.
8. Contractor is solely responsible for calling 811 before performing any digging on Authority property. Any disasters or damage to property as a result of the contractor's failure to call 811 and receive notification from utility companies on underground line locations shall be considered a breach of contract. All monetary damages will be assumed by the contractor.
9. Contractor shall minimize dust from any construction activities and conform to the requirements of San Joaquin Valley Unified Air Pollution Control District.
10. The Contractor must comply with all laws, ordinances, rules, and regulations applicable to the work. The Contractor will provide adequate protection for all persons and all Authority personnel within the working area or approaches thereto and will furnish and erect temporary barricades where necessary.
11. Contractor will supply all safety or warning signs, equipment, plastic covers, barricades, and any other specialty items that may be required. The Contractor, its employees, subcontractors, or other representatives, have no tenancy and

shall be admitted to the grounds only for the proper execution of the work under this contract.

12. Contractor's employees shall wear identification (uniform, shirt, caps, etc.) while performing duties.
13. All work shall be inspected and signed off by the Authority's Authorized Representative before the work is deemed complete. No payment will be made until all work is completed to the satisfaction of the Authority and is deemed complete.

IV. Travel Costs/Expenses:

The Authority shall not pay contractor nor reimburse contractor for any travel, meals, lodging, or incidental expenses incurred in the performance of the project or related to the awarded contract. All such costs are deemed included in the submitted fixed contract price.

V. Build America, Buy America Requirements:

The Build America, Buy America (BABA) Act was enacted on November 15, 2021, as part of the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. No. 117-58), also known as the Bipartisan Infrastructure Law. BABA establishes a domestic content procurement preference known as the "Buy America Preference" (BAP) for Federal infrastructure spending. The BAP requires that all iron, steel, manufactured products, and construction materials used in infrastructure projects funded with Federal financial assistance must be produced in the United States, per the Community and Development Notice: CPD-2023-12. In accordance with these guidelines, the Authority must comply with the requirements of the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, and as applicable to this project. Pursuant to Title 2, CFR Chapter 1, Part 184, materials used are subject to BABA requirements, unless exempted by a waiver. Contractor shall make every effort to ensure any applicable material used for this project is produced in the United States according to the BABA guidelines and requirements.

VI. Drug-Free Workplace:

The Authority maintains a drug-free workplace, which applies to contracted work on all Authority properties. Contractors, Subcontractors, and/or their employees shall not engage in the use of illegal drugs. This includes the illegal use of prescription drugs, and/or alcoholic beverages on the job, at the workplace, on Authority properties, or reporting to work for Authority under the influence of any of the above.

1. **Medical Marijuana:** The use and/or possession of medical marijuana is strictly prohibited on Authority property and will result in termination of the contract. ***Federal law supersedes State laws that legalize medical marijuana related conduct.***

VII. Smoke-Free Workplace:

Authority maintains a smoke-free workplace, which applies to contracted work on all Authority properties. Contractors, Subcontractors, and/or their employees shall not smoke on any Authority property. Smoking is prohibited within twenty-five feet (25') of buildings and outdoor areas, including but not limited to residential buildings, entry ways, walkways, grassed areas, play areas, parking lots, and private vehicles parked on Authority property. Smoking materials (i.e., cigarette butts, matches, etc.) shall not be disposed of in gutters, on walkways, in streets, on driveways, in common areas, or any other areas on Authority property. Smoking materials include, but are not limited to, inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted smoking device for burning tobacco or any other plant or vapor cigarettes, vapor pens, or similar devices.

VIII. Prevailing Wage Determination: California State Department of Industrial Regulations (DIR):

The Authority maintains four Migrant Centers which are regulated by the State, as such any project or individual work performed for the Migrant Centers at an amount of \$1,000.00 or more is subject to and requires compliance with the General prevailing wage determinations made by the director of the Department of Industrial Relations (DIR) Pursuant to California Labor Code Part 7, Chapter 1, Article 2, Sections 1770, 1773, And 1773.1. The effective date of each determination is ten (10) days after the issue date. (8 CCR § 16000). The general determinations are issued twice a year (February 22nd and August 22nd) and go into effect ten days thereafter (March 3rd in a leap year and March 4th in a non-leap year for determinations issued on February 22nd, and September 1st for determinations issued on August 22nd). For Commercial Building, Highway, Heavy Construction, and Dredging Projects INDEX 2026-01 General Prevailing Wage Journeyman Rates. DIR wage determination: Northern California basic trade journeyman rates; Determination Craft: Building/Construction Inspector and Field Soils and Material Tester Determination #: NC-63-3-9-2025-1 Group 2 Construction Inspector; Issue Date: August 22, 2025. DIR Craft determination will be used for Migrant Center units. You may obtain a current wage determination by visiting:

<https://www.dir.ca.gov/oprl/2025-2/PWD/Determinations/Northern/NC-063-3-9.pdf>

Wage shall be locked in upon award of the contract. Attention is called to the Notice of Requirement for Affirmative Action to ensure Equal Employment Opportunity (Executive Order #14026) and payment of not less than prevailing salaries and wages, as set forth in the specifications, pursuant to Section 16(2) of the United States Housing Act, as amended.

RFQ: 2026-35: SUBMITTAL INSTRUCTIONS & REQUIREMENTS

Unless otherwise specifically required, the items/information listed below must be included in the submittal. Please complete this form by marking an "X", where provided, to verify that the referenced completed form or information has been included within the original hardcopy submitted by the firm. Submittals must be tabbed in the order listed below for continuity and ease of reference. It is the sole responsibility of the respondent to include all required documents with signatures to ensure a responsive submittal.

Form/ Information Included	TAB #	SUBMITTAL ITEMS/INFORMATION (Submit FOUR (4) complete proposals, including one with original signatures)
X	Example	Example information requested for submittal
	1	• Submittal Instructions & Requirements (Attachment 2) • Sealed Proposal Cost Form (Attachment 3) will only be opened upon successful award of contract.
	2	• Profile of Firm Form (Attachment 4) • Form of Non-Collusive Affidavit (Attachment 5) • Addendum/Addenda Acknowledgement form (Attachment 6)
	3	• Architect/Engineer Project Experience: Convey capacity to meet all requirements of RFQ • Managerial Capacity (with organizational chart if possible) • Financial Viability including declared earnings for past 3 months
	4	• Demonstrated Successful Past Performance • Three (3) references, include Company/Agency name, mailing address, contact person, telephone and email address and brief description of services performed
	5	• Contractor/Sub-Contractor Information with Business Enterprise Verification (Attachment 7) • Section 3 Certification for Business Concerns seeking Business Preference (Attachment 8, must be completed or marked N/A)
	6	• HUD-5369-C: Certifications and Representations of Offerors – Non-Construction Contract (Attachment 10) • HUD-51915: Model Form of Agreement between Owner and Design Professional (Attachment 12) Must be signed.
OPTIONAL	7	• Brochures or other material that may be helpful in evaluating your firm may be included in this tab • Other Information

Non-Responsive RFQ submittals: All RFQ submittals will be reviewed for responsiveness to the material requirements of the solicitation. A submittal that is not materially responsive will not be eligible for further consideration for award of the Contract, and the respondent shall receive notice of the non-award of its submittal.

Company: _____

By (Print Name) _____ Date: _____

Signature: _____ Title: _____
(Authorized Principal or Officer)

Request for Sealed Cost Proposal Form:
RFQ #2026-35: As-Needed Architect and Engineering Services

This cost proposal will be submitted in a separate sealed envelope. Include the firm name, and title: **Sealed Proposal Cost Form: RFQ#2026-35: As-Needed Architect and Engineering Services**, on the front of the envelope. This envelope will not be opened by the Authority until after successful selection of a consultant(s). After identifying the top ranked firm, the Authority will open the top ranked firm's cost proposal to begin negotiations with that firm.

The undersigned, having familiarized themselves with the general project descriptions noted in the scope of work of this Request for Qualifications as issued by The Housing Authority of the County of Merced (Authority), hereby submits costs for below requested items and to the best of the ability the cost for all labor, tools, materials, equipment, personnel, supervision, machinery, permits and services, including utility and transportation services, generally associated with the general project descriptions.

Itemized Travel Costs/Expenses:

The Authority shall not pay contractor nor reimburse contractor for any travel, meals, lodging, or incidental expenses incurred in the performance of related projects or ensuing awarded contracts.

Name and Title of Staff	Staffs Project Experience:	Hourly Rate of Staff

***Attach additional sheets of paper, as needed.**

Example of Projects completed by Contractor and project total cost:

Please list the last 4 projects performed and completed by your firm

Project Title	Description of Project and Work Performed Please note project point of contacts	Project Duration	Project Final Cost
EXAMPLE: <i>City wastewater Improvement plan</i>	EXAMPLE: <i>Assessed current infrastructure for future capitol improvement plans. Analyzed current existing wastewater ponds. Created scope of work for improvements, etc. P.O.C: Joe Smith</i>	EXAMPLE: <i>6 months</i>	EXAMPLE: <i>\$25,000.00</i>

Attach additional sheets of paper, as needed.*This sealed Cost Proposal form is submitted by:**

Company: _____

By (Print Name) _____ Date: _____

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

Phone #: _____ Fax: _____ Email: _____

Signature: _____
(Authorized Principal or Officer)

PROFILE OF FIRM FORM

1. Prime _____ Sub-contractor _____

2. Name of Firm: _____

Contact Person: _____

Telephone: _____ Cell: _____

Fax: _____ Email: _____

Secondary Email: _____

3. Street Address, City, State, Zip:

4. Mailing Address, City, State, Zip (if different)

5. Please attached a brief biography/resume of the company, including the following information:

a) Year Firm Established;

b) Former Business Name and Year Established (if applicable)

6. Identify Principals/Partners in Firm:

NAME	TITLE	% OF OWNERSHIP

7. Identify the individual(s) that will act as project manager and any other supervisory personnel that will work on project:

NAME	TITLE

8. Proposer Diversity Statement: You must circle all of the following that apply to the ownership of this firm and enter, where provided, the correct percentage (%) of ownership of each:

☐ Caucasian (Male) _____%
 ☐ Caucasian (Female) _____%
 ☐ Public-Held Corporation _____%
 ☐ Government Agency _____%
 ☐ Non-Profit Organization _____%

Resident- (RBE), Minority- (MBE), or Woman-Owned (WBE) Business Enterprise ~ Qualifies by virtue of 51% or more ownership and active management by one or more of the following:

☐ Resident-Owned _____%
 ☐ African American _____%
 ☐ Native American _____%
 ☐ Hispanic _____%
 ☐ Asian/Pacific Islander _____%
 ☐ Woman-Owned (MBE) _____%

☐ Disabled Veteran _____%
 ☐ Other (Specify): _____%

WMBE Certification Number: _____

Certified by (Agency): _____

(NOTE: A CERTIFICATION/NUMBER NOT REQUIRED TO PROPOSE – ENTER IF AVAILABLE)

9. Federal Tax ID No.: _____

10. City/County Business Licenses:

- a. City of Merced License # _____
- b. City of Atwater License # _____
- c. City of Livingston License # _____
- d. City of Los Banos License # _____
- e. City of Dos Palos License # _____
- f. County of Merced License # _____

11. State of California Contractor's License/Registration Type(s) and #.: _____

12. Worker's Compensation Insurance Carrier: _____

Policy No.: _____ Expiration Date: _____

13. General Liability Insurance Carrier: _____

Policy No. _____ Expiration Date: _____

14. Automobile Liability Insurance Carrier: _____

Policy No. _____ Expiration Date: _____

15. Debarred Statement: Has this firm, or any principal(s) ever been debarred from providing any services by the Federal Government, any state government, the State of California or any local government agency within or without the State of California?

No ☐ Yes ☐ If "Yes," please attach a full detailed explanation, including dates, circumstances and current status.

16. Disclosure Statement: Does this firm or any principals thereof have any current, past personal or professional relationship with any Commissioner, Officer and/or Employee(s) of the HA?

No ☐ Yes ☐ If "Yes," please attach a full detailed explanation, including dates, circumstances and current status.

17. Verification Statement:

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

Signature

Date

Printed Name

Company

FORM OF NON-COLLUSIVE AFFIDAVIT

_____, being first duly sworn, deposes and says:
(name of signer)

That he/she, is the _____ (a/an owner, partner, officer of the firm, etc.) the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that 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, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that 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, or paid, and will not pay, any organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

That I have examined and carefully prepared this proposal from specifications, and have checked the same in detail before submitting this proposal; that the undersigned is duly authorized to make this affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

SIGNATURE OF RESPONDENT:
if submitter is an individual
SIGNATURE OF PARTNER:
if submitter is a partnership;
SIGNATURE OF OFFICER:
if submitter is a corporation;

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

State of California

County of _____

On _____ before me _____, A Notary Public,
Date Name of Notary

Personally appeared, _____, who proved
Name(s) of Signer(s)

to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS, my hand and official seal.

(Official Seal)

Signature _____
(Signature of Notary Public)

Written Name: _____

ADDENDUM/ADDENDA ACKNOWLEDGEMENT FORM**RFQ # 2026-35:** As-Needed Architect and Engineering Services

The undersigned, having familiarized themselves with the Request for Qualifications as issued by the Housing Authority of the County of Merced (Authority), hereby proposes to furnish all labor, tools, materials, equipment, personnel, supervision, machinery, and services necessary to satisfactorily provide As-Needed A&E services. The undersigned acknowledges they are solely responsible to stay up to date on any changes that may have occurred and been published via addendum posted by the Authority. Furthermore, the undersigned by signing below, acknowledges they have received the following addendum.

ADDENDUM/ADDENDA ACKNOWLEDGEMENT:

By my signature below, I hereby acknowledge that I have received the following addendum/addenda:

Number _____ Date _____ Number _____ Date _____

Number _____ Date _____ Number _____ Date _____

Number _____ Date _____ Number _____ Date _____

____ There were no published addendum issued for this RFQ.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Company: _____

By (Print Name) _____ Date: _____

Signature: _____

(Authorized Principal or Officer)

Contractor/Sub-Contractor Information (with Business Enterprise Verification)

Dear Contractor,

Please provide the information below:

Company Name: _____

Owner/President Name: _____

Co-Owner/Vice President Name: _____

Business/Contractor License #: _____

Contractor Section 3 Status: No _____ Yes _____

Sub-Contractor Company Name: _____

Sub-Contractor Owner/President Name: _____

Sub-Contractor Co-Owner/Vice President Name: _____

Sub-Contractor Business/Contractor License #: _____

Sub- Contractor Section 3 Status: No _____ Yes _____

Contractor must check all that apply or "Not Applicable":

- A. Small Business Enterprise (SBE): _____
- B. Disadvantaged Business Enterprise (DBE): _____
- C. Minority-Owned Business Enterprise (MBE) please check below:
 - 1. White Americans _____
 - 2. Black Americans _____
 - 3. Native Americans _____
 - 4. Hispanic Americans _____
 - 5. Asians/Pacific Americans _____
 - 6. Hasidic Jews _____
- D. Woman-Owned Business Enterprise (WBE): _____
- E. Not Applicable: _____

Thank you for your cooperation!

SECTION 3 CERTIFICATION FOR BUSINESS CONCERNS SEEKING SECTION 3 BUSINESS PREFERENCE IN CONTRACTING AND DEMONSTRATION OF CAPABILITY

NAME OF BUSINESS: _____

ADDRESS OF BUSINESS: _____

TYPE OF BUSINESS: ☐ Corporation ☐ Partnership ☐ Sole Proprietorship ☐ Joint Venture ☐ LLC.

Attached is the following documentation as evidence of status:

For business claiming status as a Section 3 resident-owned Enterprise:

☐ Copy of resident lease ☐ Other evidence ☐ Copy of evidence of participation in a public assistance program

For the business entity as applicable:

- | | |
|--|--|
| ☐ Copy of Articles of Incorporation
☐ Assumed Business Name Certificate
☐ List of owners/stockholder and % of each
☐ Latest Board minutes appointing officers
☐ Organization chart with names and titles and brief functional statement | ☐ Certificate of Good Standing
☐ Partnership Agreement
☐ Corporation Annual Report
☐ Additional documentation |
|--|--|

For business claiming Section 3 status by subcontracting 25% of the dollar awarded to qualified Section 3 business:

☐ List of subcontracted Section 3 business and subcontract amount

For business claiming Section 3 status, claiming at least 30% of their workforce are currently Section 3 residents or were Section 3 eligible residents within 3 years of date of first employment with the business:

- | | |
|--|---|
| ☐ List of all current full-time employees
☐ PHA Residential lease (less than 3 years from date of employment) | ☐ List of all employees claiming Section 3 status
☐ Other evidence of Section 3 status (less than 3 years from date of employment) |
|--|---|

Evidence of ability to perform successfully under the terms and conditions of the proposed contract:

- | | |
|---|--|
| ☐ Current financial statement
☐ Statement of ability to comply | ☐ List of owned equipment
☐ List of all contracts for the past 2 years with public policy |
|---|--|

Corporate Seal

AUTHORIZING NAME AND SIGNATURE:

Title

Date

Signature

Printed Name



SUGGESTED AFFIRMATIVE ACTION PLAN FOR UTILIZATION OF PROJECT AREA BUSINESSES

Number of All Contracts Proposed: _____

Name of Company: _____

Dollar Value of All Contracts Proposed: _____

Project: _____

To the Greatest Extent Feasible, Contracts Will Be Awarded Through Negotiation or Bid to Qualified Project Area Businesses.

Goal of These Contracts for Project Area Businesses:

PROPOSED TYPE OF CONTRACT	APPROX. COST	PROPOSED TYPE OF CONTRACT	APPROX. COST

Outline the Program to Achieve These Goals for Economically and Socially Disadvantaged:

NOTE: To Complete the Affirmative Action Plan, Follow Steps Outlines in Attached Exhibit.

SUGGESTED SECTION 3 PRELIMINARY WORKFORCE STATEMENT UTILIZATION OF LOWER INCOME PROJECT AREA RESIDENTS AS REGULAR, PERMANENT EMPLOYEES, TRAINEES, APPRENTICES.

COMPANY NAME: _____

ADDRESS: _____

PROJECT: _____

	PRESENT PERMANENT EMPLOYEES (At Time of Contract Signing)	SECTION 3 WORKFORCE PROJECTION (Residents)	TOTAL PROJECTED WORKFORCE INCREASE
TRAINEES			
APPRENTICES			
JOURNEYPERSONS			
LABORERS			
SUPERVISORY			
SUPERINTENDENT			
PROFESSIONAL			
CLERICAL			

NOTE: RESIDENTS ARE THOSE LOWER INCOME PROJECT AREA RESIDENTS WHO HAVE BEEN QUALIFIED AS ELIGIBLE.

SECTION 3 BUSINESS PREFERENCE CLAUSE

This contract is subject to the following conditions under Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3).

- 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 or 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 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 (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 Enterprise. 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).

PREFERENCE FOR SECTION 3 BUSINESS CONCERNS IN CONTRACTING OPPORTUNITIES

The HA has established the following priority for preference when providing contracting opportunities to Section 3 Businesses:

Priority I

Category 1a Business

Business concerns that are 51 percent or more owned by residents of the housing development or developments for which the Section 3-covered assistance is expended.

Priority II

Category 1b Business

Business concerns whose workforce includes 30 percent of residents of the housing development for which the Section 3-covered assistance is expended, or within three (3) years of the date of first employment with the business concern, were residents of the Section 3-covered housing development.

Priority III

Category 2a Business

Business concerns that are 51 percent or more owned by residents of any other housing development or developments.

Priority IV

Category 2b Business

Business concerns whose workforce includes 30 percent of residents of any other public housing development or developments, or within three (3) years of the date of first employment with the business concern, were "Section 3" residents of any other public housing development.

Priority V

Category 3 Business

Business concerns participating in HUD Youth-build programs being carried out in the metropolitan area in which the Section 3-covered assistance is expended.

Priority VI

Category 4a Business

Business concerns that are 51 percent or more owned by Section 3 residents in the metropolitan area, or whose permanent, full-time workforce includes no less than 30 percent of Section 3 residents in the metropolitan area, or within three (3) years of the date of employment with the business concern, were Section 3 residents in the metropolitan area.

Priority VII

Category 4b Business

Business concerns that subcontract in excess of 25 percent of the total amount of subcontracts to Section 3 business concerns.

Eligibility for Preference

A business concern seeking to qualify for a Section 3 contracting preference shall certify or submit evidence that the business concern is a Section business concern.

HUD directs within 24 CFR 135 that the HA may make award to qualified Section 3 business concern with the highest priority ranking and with the lowest responsive bid if that bid is:

- (a) within the maximum total contract price established by the HA; or
- (b) not more than “X” higher than the total bid price of the lowest responsive bid from any responsible bidder. “X” is determined as follows:

“X” = LESSOR OF:	
When the lowest responsive bid is less than \$100,000	10% of that bid, or \$9,000.00
When the lowest responsive bid is at least:	
\$100,000.00, but less than \$200,000.00	9% of that bid, or \$16,000.00
\$200,000.00, but less than \$300,000.00	8% of that bid, or \$21,000.00
\$300,000.00, but less than \$400,000.00	7% of that bid, or \$24,000.00
\$400,000.00, but less than \$500,000.00	6% of that bid, or \$25,000.00
\$500,000.00, but less than \$1,000,000.00	5% of that bid, or \$40,000.00
\$1,000,000.00, but less than \$2,000,000.00	4% of that bid, or \$60,000.00
\$2,000,000.00, but less than \$4,000,000.00	3% of that bid, or \$80,000.00
\$4,000,000.00, but less than \$7,000,000.00	2% of that bid, or \$105,000.00
\$7,000,000.00, or more	1.5% of the lowest responsive and responsible bid with no dollar limit

Instructions to Offerors Non-Construction

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



- 03291 -

1. Preparation of Offers

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

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

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

2. Submission of Offers

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

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

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

3. Amendments to Solicitations

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

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

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

4. Explanation to Prospective Offerors

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

5. Responsibility of Prospective Contractor

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

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

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

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

6. Late Submissions, Modifications, and Withdrawal of Offers

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

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

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

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

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

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

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

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

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

7. Contract Award

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

(b) The HA may

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

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

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

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

8. Service of Protest

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

9. Offer Submission

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

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

[Describe bid or proposal preparation instructions here:]

Certifications and Representations of Offerors

Non-Construction Contract

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

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

1. Contingent Fee Representation and Agreement

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

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

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

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

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

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

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

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

(Check the block applicable to you)

- | | |
|---|---|
| ☐ Black Americans | ☐ Asian Pacific Americans |
| ☐ Hispanic Americans | ☐ Asian Indian Americans |
| ☐ Native Americans | ☐ Hasidic Jewish Americans |

3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

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

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

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

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

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

4. Organizational Conflicts of Interest Certification

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed contract and a prospective contractor's organizational, financial, contractual or other interest are such that:
- (i) Award of the contract may result in an unfair competitive advantage;
 - (ii) The Contractor's objectivity in performing the contract work may be impaired; or
 - (iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.
- (b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract for the convenience of HA if it would be in the best interest of HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this Contract and intentionally did not disclose the conflict to the HA, the HA may terminate the Contract for default.
- (d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

5. Authorized Negotiators (RFPs only)

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

6. Conflict of Interest

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

7. Offeror's Signature

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

Signature & Date:

Typed or Printed Name:

Title:

General Conditions for Non-Construction Contracts

Section I — (With or without Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 1/31/2027)

Public Reporting Burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB number. This form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 2 CFR 200, 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 75. The form is required for non-construction contracts awarded by Public Housing Agencies (PHAs). The form is used by PHAs in solicitations to provide necessary contract clauses and allows PHAs to enforce their contracts. Comments regarding the accuracy of this burden estimate and any suggestions for reducing this burden can be sent to the Reports Management Officer, Office of Policy Development and Research, REE, Department of Housing and Urban Development, 451 7th St SW, Room 4176, Washington, DC 20410-5000. When providing comments, please refer to OMB Approval No. 2577-0157. Do not send this completed form to either of these addressees. The information collected will not be held confidential.

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

- 1) **Non-construction contracts** (*without* maintenance) **greater than \$250,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 905.100) **greater than \$2,000 but not more than \$250,000 - use Section II; and**
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$250,000 — use Sections I and II.**

Section I - Clauses for All Non-Construction Contracts greater than \$250,000

1. Definitions

The following definitions are applicable to this contract:

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

2. Changes

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

proposal submitted before final payment of the contract.

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

3. Termination for Convenience and Default

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

4. Examination and Retention of Contractor's Records

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

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

5. Rights in Data (Ownership and Proprietary Interest)

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

6. Energy Efficiency

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

7. Disputes

- (a) All disputes arising under or relating to this contract, except for disputes arising under clauses contained in Section 111, Labor Standards Provisions, including any claims for damages for the alleged breach there of which are not disposed of by agreement, shall be resolved under this clause.
- (b) All claims by the Contractor shall be made in writing and submitted to the HA. A claim by the HA against the Contractor shall be subject to a written decision by the HA.
- (c) The HA shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HA's decision, shall notify the HA in writing that it takes exception to such decision, the decision shall be final and conclusive.
- (d) Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against the HA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HA that it submit a final voucher and release, whichever is earlier, then the HA's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.
- (e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the HA.

8. Contract Termination; Debarment

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

9. Assignment of Contract

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

10. Certificate and Release

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

11. Organizational Conflicts of Interest

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

12. Inspection and Acceptance

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

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

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

13. Interest of Members of Congress

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

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

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

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

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

(v) The prohibition does not apply as follows:

-
- (1) Agency and legislative liaison by Own Employees.
- (a) The prohibition on the use of appropriated funds, in paragraph (i) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, if the payment is for agency and legislative activities not directly related to a covered Federal action.
- (b) For purposes of paragraph (b)(i)(1)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.
- (c) The following agency and legislative liaison activities are permitted at any time only where they are not related to a specific solicitation for any covered Federal action:
- (1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,
- (2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
- (d) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:
- (1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
- (2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
- (3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.
- (e) Only those activities expressly authorized by subdivision (b)(ii)(1)(a) of this clause are permitted under this clause.
- (2) Professional and technical services.
- (a) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply in the case of-
- (i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
- (i) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (b) For purposes of subdivision (b)(ii)(2)(a) of clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline.
- (c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
- (d) Only those services expressly authorized by subdivisions (b)(ii)(2)(a)(i) and (ii) of this section are permitted under this clause.
- (iii) Selling activities by independent sales representatives.
- (c) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:
- (i) Discussing with an agency (including individual demonstration) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and
- (ii) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
- (d) Agreement. In accepting any contract, grant, cooperative agreement, or loan resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.
- (e) Penalties. Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
- (f) Cost Allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation (FAR), or OMB Circulars dealing with cost allowability for recipients of assistance agreements. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of FAR Part 31 or the relevant OMB Circulars.
-

16. Equal Employment Opportunity

During the performance of this contract, the

Contractor/Seller agrees as follows:

(a) The [contractor/seller] will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. The

[contractor/seller] will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. Such action 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 for training, including apprenticeship. The [contractor/seller] agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(b) The [contractor/seller] will, in all solicitations or advertisements for employees placed by or on behalf of the [contractor/seller], state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, disability, or national origin.

(c) The [contractor/seller] will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the [contractor/seller]'s legal duty to furnish information.

(d) The [contractor/seller] will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the [contractor/seller]'s commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) The [contractor/seller] will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(f) The [contractor/seller] will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(g) In the event of the [contractor/seller]'s non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the [contractor/seller] may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) In the event of the [contractor/seller]'s non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the [contractor/seller] may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) The [contractor/seller] will include the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor/seller or vendor. The [contractor/seller] will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the [contractor/seller] becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the [contractor/seller] may request the United States to enter into such litigation to protect the interests of the United States.

17. Equal Opportunity for Workers with Disabilities

1. The [contractor/seller] will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The [contractor/seller] agrees to take affirmative action to employ and advance in employment individuals with disabilities, and to treat qualified individuals without discrimination on the basis of their physical or mental disability in all employment practices, including the following:

- i. Recruitment, advertising, and job application procedures;
- ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
- iii. Rates of pay or any other form of compensation and changes in compensation;
- iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- v. Leaves of absence, sick leave, or any other leave;
- vi. Fringe benefits available by virtue of employment, whether or not administered by the [contractor/seller];
- vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- viii. Activities sponsored by the [contractor/seller] including social or recreational programs; and
- ix. Any other term, condition, or privilege of employment.

2. The [contractor/seller] agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

3. In the event of the [contractor/seller] noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

4. The [contractor/seller] agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the [contractor/seller]'s obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities.

The [contractor/seller] must ensure that applicants or employees with disabilities are provided the notice in a form that is accessible and understandable to the individual applicant or employee (e.g., providing Brail or large print versions of the notice, or posting a copy of the notice at a lower height for easy viewing by a person using a wheelchair). With respect to employees who do not work at a physical location of the [contractor/seller], a [contractor/seller] will satisfy its posting obligations by posting such notices in an electronic format, provided that the [contractor/seller] provides computers, or access to computers, that can access the electronic posting to such employees, or the [contractor/seller] has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the [contractor/seller] to notify job applicants of their rights if the [contractor/seller] utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.

5. The [contractor/seller] will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the [contractor/seller] is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, individuals with physical or mental disabilities.

6. The [contractor/seller] will include the provisions of this clause in every subcontract or purchase order in excess of \$ 10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

7. The [contractor/seller] must, in all solicitations or advertisements for employees placed by or on behalf of the [contractor/seller], state that all qualified applicants will receive consideration for employment and will not be discriminated against on the basis of disability.

18. Dissemination or Disclosure of Information

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

19. Contractor's Status

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

20. Other Contractors

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

21. Liens

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

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

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 75, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 prioritization requirements, and shall state the minimum percentages of labor hour requirements established in the Benchmark Notice (FR-6085-N-04)..
- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.
- (e) Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts
- (f) Contracts, subcontracts, grants, or subgrants subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business opportunities to Indians and Indian organizations, and are therefore not subject to the requirements of 24 CFR Part 75.

23. 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

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

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

Model Form of Agreement Between Owner and Design Professional

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

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

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number. These contracts between a HUD grantee (housing agency (HA)) and an architect/engineer (A/E) for design and construction services do not require either party to submit any materials to HUD. The forms provide a contractual agreement for the services to be provided by the A/E and establishes responsibilities of both parties pursuant to the contract. The regulatory authority is 2 CFR 200. These contractual agreements are required by Federal law or regulation pursuant to 2 CFR Part 200. Signing of the contracts is required to obtain or retain benefits. The contracts do not lend themselves to confidentiality.

Table of Contents	Page
Introduction	3
Article A: Services	4
A. 1.0 Design Professional's Basic Services	4
A. 1.1 Areas of Professional's Basic Services	4
A. 1.2 Phases and Descriptions of Basic Services	4
A. 1.2.1 Schematic Design/Preliminary Study Phase	4
A. 1.2.2 Design Development Phase	4
A. 1.2.3 Bidding, Construction and Contract Document Phase	4
A. 1.2.4 Bidding and Award Phase	4
A. 1.2.5 Construction Phase	5
A. 1.2.6 Post Completion/Warranty Phase	5
A. 1.3 Time of Performance	5
A. 2.0 Design Professional's Additional Services	5
A. 2.1 Description of Additional Services	5
A. 2.2 Written Addendum or Contract Amendment	5
Article B: Compensation and Payment	6
B. 1.0 Basic Services	6
B. 1.1 Fixed Fee for Basic Services	6
B. 1.2 Payment Schedule	6
B. 2.0 Reimbursables	6
B. 2.1 Reimbursable Expenses	6
B. 2.1.1 Travel Costs	6
B. 2.1.2 Long-Distance Telephone Costs	6
B. 2.1.3 Delivery Costs	6
B. 2.1.4 Reproduction Costs	6
B. 2.1.5 Additional Reimbursables	6
B. 3.0 Additional Services	6
B. 3.1 Payment for Additional Services	6
B. 4.0 Invoicing and Payments	6
B. 4.1 Invoices	6
B. 4.2 Time of Payment	6
Article C: Responsibilities	6
C. 1.0 Design Professional's Responsibilities	6
C. 1.1 Basic Services	6
C. 1.2 Additional Services	6
C. 1.3 General Responsibilities	6
C. 1.4 Designing within Funding Limitations	7
C. 1.5 Compliance with Laws, Codes, Ordinances and Regulations	7
C. 1.6 Seal	7
C. 1.7 Attendance at Conferences	7
C. 2.0 Owner's Responsibilities	7
C. 2.1 Information	7
C. 2.2 Notice of Defects	7
C. 2.3 Contract Officer	7

C. 2.4 Duties to Furnish	7
C. 2.4.1 Survey and Property Restrictions	7
C. 2.4.2 Existing Conditions	7
C. 2.4.3 Waivers	7
C. 2.4.4 Minimum Wage Rates	7
C. 2.4.5 Tests	7
C. 2.4.6 Contract Terms	7
Article D: Contract Administration	8
D. 1.0 Prohibition of Assignment	8
D. 1.1 Ownership of Documents	8
D. 1.2 Substitutions	8
D. 1.3 Suspension	8
D. 1.4 Subcontracts	8
D. 1.5 Disputes	8
D. 1.6 Terminations	8
D. 1.7 Insurance	8
D. 1.8 Retention of Rights	8
Article E: Additional Requirements	8
E. 1.0 Contract Provisions Required by Federal Law or Owner Contract with the U.S. Department of Housing and Urban Development	8
E. 1.1 Contract Adjustments	8
E. 1.2 Additional Services	9
E. 1.3 Restrictive Drawings and Specifications	9
E. 1.4 Design Certification	9
E. 1.5 Retention and Inspection of Records	9
E. 1.6 Copyrights and Rights in Data	9
E. 1.7 Conflicts of Interest	9
E. 1.8 Disputes	9
E. 1.9 Termination	9
E. 1.10 Interest of Members of Congress	9
E. 1.11 Limitation of Payments to Influence Certain Federal Transactions	10
E. 1.12 Employment, Training and Contracting Opportunities for Low income Persons, Section 3, HUD Act of 1968	10
E. 1.13 Reserved	10
E. 1.14 Clean Air and Water (Applicable to Contracts in excess of \$100,000)	11
E. 1.15 Energy Efficiency	11
E. 1.16 Prevailing Wages	11
E. 1.17 Non-applicability of Fair Housing Requirements in Indian Housing Authority Contracts	11
E. 1.18 Prohibition Against Liens	11
Article F: Other Requirements (If any)	11
Execution of Agreement	11
Addendum (If any)	1

Introduction to Agreement

Agreement

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

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

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

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

The Owner and Design Professional agree as set forth below.

Article A: Services

A 1.0 Design Professional's Basic Services

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

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

A 1.2 Phases and Descriptions of Basic Services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. 2.0 Design Professional's Additional Services

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

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

Article B: Compensation and Payment B.

1.0 Basic Services

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

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

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

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

B. 2.0 Reimbursables

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

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

B. 2.1.2 Long Distance Telephone Costs. Long distance tele-phone calls and long distance telefax costs.

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

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

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

B. 3.0 Additional Services

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

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

B. 4.0 Invoicing and Payments

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

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

Article C: Responsibilities

C. 1.0 Design Professional's Responsibilities

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

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

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

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

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

C. 1.5 Compliance with Laws, Codes, Ordinances and Regulations. The Design Professional shall perform services that conform to all applicable Federal, State and local laws, codes, ordinances and regulations except as modified by any waivers which may be obtained with the approval of the Owner. The Design Professional shall certify that Contract Documents will conform to all applicable laws, codes, ordinances and regulations. The Design Professional shall prepare all construction documents required for approval by all governmental agencies having jurisdiction over the project. The Design professional shall make all changes in the Bidding and Construction Documents necessary to obtain governmental approval without additional compensation or reimbursement, except in the following situations. If subsequent to the date the Owner issues a notice to proceed, revisions are made to applicable codes or non-federal regulations, the Design Professional shall be entitled to additional compensation and reimbursements for any additional cost resulting from such changes. The Design Professional, however, is obligated to notify the Owner of all significant code or regulatory changes within sixty (60) days of their change, and such notification shall be required in order for the Design Professional to be entitled to any additional compensation or reimbursement. Both the owner and design professional are responsible for ensuring that the design and construction comply with any applicable accessibility laws, including the Fair Housing Act (see 24 C.F.R. § 100.205), Sect. 504 of the Rehabilitation Act (Sect. 504), and the Americans with Disabilities Act (ADA). Compliance with Sect. 504 requires adherence to the Uniform Federal Accessibility Standards (See <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-aba-standards/ufas>) and compliance with the ADA requires adherence to the 2010 ADA standards (See https://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards_prt.pdf).

C. 1.6 Seal. Licensed Design Professionals shall affix their seals and signatures to drawings and specifications produced under this Agreement when required by law.

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

C. 2.0 Owner's Responsibilities

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

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

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

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

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

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

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

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

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

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

Article D: Contract Administration

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

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

D. 1.2 Substitutions.

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

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

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

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

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

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

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

Insurance	Limits or Amount

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

Article E: Additional Requirements

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

E. 1.1 Contract Adjustments. Notwithstanding any other term or condition of this Agreement, any settlement or equitable adjustment due to termination, suspension or delays by the Owner shall be negotiated based on the cost principles stated at 48 CFR Subpart 31.2 and conform to the Contract pricing provisions of 2 CFR 200.

E. 1.2 Additional Services. The Owner shall perform a cost or price analysis as required by 2 CFR 200 prior to the issuance of a contract modification/amendment for Additional Services. Such Additional Services shall be within the general scope of services covered by this Agreement. The Design Professional shall provide supporting cost information in sufficient detail to permit the Owner to perform the required cost or price analysis.

E. 1.3 Restrictive Drawings and Specifications. In accordance with 2 CFR 200 and contract agreements between the Owner and HUD, the Design Professional shall not require the use of materials, products, or services that unduly restrict competition.

E. 1.4 Design Certification. Where the Owner is required by federal regulations to provide HUD a Design Professional certification regarding the design of the Projects (24 CFR 905), the Design Professional shall provide such a certification to the Owner.

E. 1.5 Retention and Inspection of Records. Pursuant to 2 CFR 200, access shall be given by the Design Professional to the Owner, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the Design Professional which are directly pertinent to that specific Contract for the purpose of making an audit, examination, excerpts, and transcriptions. All required records shall be retained for three years after the Owner or Design Professional and other subgrantees make final payments and all other pending matters are closed.

E. 1.6 Copyrights and Rights in Data. HUD has no regulations pertaining to copyrights or rights in data as provided in 2 CFR 200. HUD requirements, Article 45 of the General Conditions to the Contract for Construction (form HUD-5370) requires that contractors pay all royalties and license fees. All drawings and specifications prepared by the Design Professional pursuant to this contract will identify any applicable patents to enable the general contractor to fulfil the requirements of the construction contract.

E. 1.7 Conflicts of Interest. Based in part on federal regulations (2 CFR 200 and Contract agreement between the Owner and HUD, no employee, officer, or agent of the Owner (HUD grantee) shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when:

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

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

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

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

E. 1.8 Disputes. In part because of HUD regulations (2 CFR 200, this Design Professional Agreement, unless it is a small purchase contract, has administrative, contractual, or legal remedies for instances where the Design Professional violates or breaches Agreement terms, and provide for such sanctions and penalties as may be appropriate.

E. 1.9 Termination. In part because of HUD regulations (2 CFR 200), this Design Professional Agreement, unless it is for an amount of \$10,000 or less, has requirements regarding termination by the Owner when for cause or convenience. These include the manner by which the termination will be effected and basis for settlement.

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

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

E. 1.12 Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

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

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

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

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

G. Reserved.

H. Reserved.

E. 1.13 Reserved.

E. 1.14 Clean Air and Water. (Applicable to contracts in excess of \$150,000). Because of 2 CFR 200) and Federal law, the Design Professional shall comply with applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 1857h-4 transferred to 42 USC § 7607, section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15), on all contracts, subcontracts, and subgrants of amounts in excess of \$150,000.

E. 1.15 Energy Efficiency. Pursuant to Federal regulations (2 CFR 200) and Federal law, except when working on an Indian housing authority Project on an Indian reservation, the Design Professional shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163 codified at 42 U.S.C.A. § 6321 et. seq.).

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

E. 1.17 Non-applicability of Fair Housing Requirements in Indian Housing Authority Contracts. Pursuant to 24 § CFR Part 1, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, and the Fair Housing Act (42 U.S.C. 3601-3620), which prohibits discrimination based on race, color, religion, sex, national origin, disability, or familial status in the sale or rental of housing do not apply to Indian Housing Authorities established by exercise of a Tribe's powers of self-government. Pursuant to 24 CFR § 1000.12, other civil rights statutes do apply to Indian Housing Authorities such as, Section 504, the Indian Civil Rights Act, and the Age Discrimination Act. (29 USC 794; 25 USC 1301.1303; and 42 USC 6101-6107 respectively).

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

Article F: Other Owner Requirements (if any)

(Continue on additional pages as necessary)

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

Owner	Design Professional
(Housing Authority)	(Firm)
(Signature)	(Signature)
(Print Name)	(Print Name)
(Print Title)	(Print Title)

Addendum (If any)
(Additional Services and other modifications)

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

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

Owner	Design Professional
_____	_____
(Housing Authority)	(Firm)
_____	_____
(Signature)	(Signature)
_____	_____
(Print Name)	(Print Name)
_____	_____
(Print Title)	(Print Title)

INSURANCE REQUIREMENTS FOR CONSULTANTS

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Consultant, its agents, representatives, employees, or sub-contractors.

Contractor shall list "Housing Authority of the County of Merced" as the additionally insured on all Certificates of Insurance (COI) forms. Insurance cards are not acceptable, COI must show minimum limits of Insurance as noted in below section "2, minimum limits of Insurance"

I. MINIMUM SCOPE OF INSURANCE: Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01 10 01).
2. Insurance Services Office Additional Insured form (CG 20 37 or CG 20 26).
3. Insurance Services Office form number CA 00 01 06 92 covering Automobile Liability, Code 1 (any auto) [required if scope of work includes driving on Authority property].
4. Workers' Compensation insurance as required by state law and Employer's Liability Insurance.
5. Professional Errors and Omissions Liability insurance appropriate to the Consultant's profession

II. MINIMUM LIMITS OF INSURANCE: Consultant shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for Bodily Injury, Personal Injury, and Property Damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for Bodily Injury and Property Damage.
3. Workers' Compensation (statutory) and Employer's Liability: \$1,000,000 per accident for Bodily Injury or Disease.
4. Professional Errors and Omissions Liability insurance: \$1,000,000 per occurrence.

NOTE: These limits can be attained by individual policies or by combining primary and umbrella policies

III. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved

by the Authority. At the option of the Authority, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Authority, its officers, officials, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the Authority guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

IV. OTHER INSURANCE PROVISIONS

The General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

1. The Authority, its officers, officials, employees, and volunteers are to be covered as additional insured with respect to liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant.
2. For any claims related to this contract, The Consultant's insurance coverage shall be primary insurance as respects the Authority, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Authority, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance.
3. Each insurance policy required by these specifications shall be endorsed to state that coverage shall not be cancelled or materially changed, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Authority.
4. Maintenance of the proper insurance for the duration of the contract is a material element of the contract. Material changes in the required coverage or cancellation of the coverage shall constitute a material breach of the contract by the consultant.

V. ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than B+: VI. Consultants must provide written verification of their insurer's rating.

VI. VERIFICATION OF COVERAGE

Consultant shall furnish the Authority with original certificates and amendatory endorsements effecting coverage required by these specifications. The endorsements should conform fully to the requirements. All certificates and endorsements are to be received and approved by the Authority in sufficient time before the agreement commences to permit Consultant to remedy any deficiencies. The Authority reserves the right to

require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

VII. SUB-CONTRACTORS

Use of sub-contractors must be pre-approved by the Authority. Consultant shall include all sub-contractors as insureds under its policies or shall furnish separate insurance certificates and endorsements for each sub-contractor in a manner and in such time as to permit the Authority to approve them before the sub-contractor begins their work. All coverages for sub-contractors shall be subject to all of the requirements stated above.

1. Notwithstanding this provision, Consultant shall indemnify the Authority for any claims resulting from the performance or non-performance of the Consultant's sub-contractors and/or their failure to be properly insured