



REPORT

DATE ISSUED: September 29, 2016

REPORT NO: HCR16-085

ATTENTION: Chair and Members of the San Diego Housing Commission
For the Agenda of October 7, 2016

SUBJECT: Emergency Heating, Ventilation, and Air Conditioning Repairs at Smart Corner

COUNCIL DISTRICT: 3

REQUESTED ACTION

Ratify the actions taken by the San Diego Housing Commission to address emergency Heating, Ventilation, and Air Conditioning repairs at the Smart Corner office building located at 1122 Broadway, San Diego.

STAFF RECOMMENDATION

That the San Diego Housing Commission (Housing Commission) take following actions:

- 1) Ratify the award of a sole-source contract to Johnson & Blanc in the amount of \$135,728 for the emergency repair of the Smart Corner Heating Ventilation and Air Conditioning (HVAC) system;
- 2) Approve the amendment to the Fiscal Year 2017 (July 1, 2016 – June 30, 2017) Smart Corner budget to increase HVAC Repairs in the amount of \$140,000; and
- 3) Authorize the President & Chief Executive Office (President & CEO), or designee, to execute all contract documents and instruments that are necessary and/or appropriate to implement these approvals, in a form approved by General Counsel, and to take such actions as are necessary and/or appropriate to implement these approvals.

SUMMARY

The Housing Commission's headquarters building is known as the Smart Corner office building, located at 1122 Broadway, San Diego, California. Smart Corner is a five-story Class A facility. The Housing Commission occupies the first, third, fourth, and fifth floor, with the second floor occupied by the San Diego Family Justice Center. In addition, street level retail space is occupied by 7-Eleven and Metro PCS.

Over the past few months, the Smart Corner building has required repeated maintenance calls for the HVAC system due to aging condenser coils. During the course of these maintenance calls, it was discovered that the system would be experiencing continued maintenance issues due to age and degradation of the system.

The Housing Commission's HVAC maintenance vendor determined that there was an immediate need to replace the HVAC condenser coils as they have reached their useful life and are showing signs of failure. Housing Commission staff requested a sole source contract be initiated on the basis that the condenser coils need to be replaced immediately, and the HVAC system is quickly deteriorating, losing its ability to function properly on a daily basis. Housing Commission staff contacted a second contractor that confirmed the professional opinion that the HVAC condenser coils need to be replaced. The sole source action was both prudent and justified because of the possibility that the HVAC system could completely shut down, which could result in the interruption of day-to-day operations and greater repair cost.

The HVAC condenser coils that are being replaced are the original coils installed during the construction of the Smart Corner building in 2006. The average useful life for this equipment is eight to ten years. Two independent HVAC contractors have determined that the coils useful life was average due to the close proximity of the Pacific Ocean and the corrosive effect salty sea breezes can have.

The Housing Commission's Statement of Procurement Policy (Procurement Policy) allows for sole source contracting under the provisions of Section 14.2, when non-federal funds are utilized, as is the case in this procurement; justification exists when a competitive process would fail to achieve the desired result (due to emergency); and a competitive procurement would be undesirable or impractical, which in this case a formal and lengthy bid process would ensue. The sole source justification is currently on file in Housing Commission records.

As part of the Housing Commission's due diligence efforts, staff obtained two quotes to perform the work. One from A.O. Reed, our current preventive maintenance contractor, in the amount of \$151,350 and a second from Jackson & Blanc, in the amount of \$135,728.

After review of the quotes, the Housing Commission subsequently entered into a contract (Attachment 1) with Jackson & Blanc to perform the work. Jackson & Blanc's quote was approximately \$15,000 less and included a superior epoxy coating, which should substantially extend the expected life of the condenser coils. Expediency was necessary due to the order lead time required to manufacture the condenser coils. Installation and repairs are scheduled to be completed in mid-October.

FISCAL CONSIDERATIONS

The proposed sources and uses requested in this report were not approved by the Housing Authority in the Fiscal Year (FY) 2017 Housing Commission Budget. Approving this action will increase FY 2017 budgeted property expenses by \$140,000.

Funding sources approved by this action will be as follows:

Smart Corner Property Reserves (Local) - \$140,000

Funding uses approved by this action will be as follows:

Property Expenses - \$140,000

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ENVIRONMENTAL REVIEW

The proposed lease is categorically exempt from the requirements of California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15301 because Smart Corner is an existing facility and the proposed actions involve negligible or no expansion of the existing use. Furthermore, the project meets the criteria set forth in CEQA Section 15301, which allows for leasing activities in existing facilities and where the exceptions listed in CEQA Section 15300.2 would not apply. Processing under the National Environmental Policy Act is not required since no federal funds are involved in this action.

Respectfully submitted,



John Mann
Asset Manager
Portfolio Management Department

Approved by,



Michael Pavco
Senior Vice President
Real Estate Division

Attachments: 1. Contract between the Housing Commission and Jackson & Blanc

Hard copies are available for review during business hours at the security information desk in the main lobby and at the fifth floor reception desk of the San Diego Housing Commission offices at 1122 Broadway, San Diego, CA 92101 and at the Office of the San Diego City Clerk, 202 C Street, San Diego, CA 92101. You may also review complete docket materials in the "Public Meetings" section of the San Diego Housing Commission website at www.sdhc.org.

SAN DIEGO HOUSING COMMISSION
AGREEMENT FOR
EMERGENCY REPLACEMENT OF HVAC CONDENSER COILS AT SMART CORNER
WITH
JACKSON & BLANC
Contract No. PM-17-05

THIS AGREEMENT (the "Contract"), entered into the 29th day of September 2016,

between the Commission:

SAN DIEGO HOUSING COMMISSION
1122 Broadway, Suite 300
San Diego, California 92101
(619) 231-9400

and the Contractor:

Jackson & Blanc
7929 Arjons Dr
San Diego, CA 92126
(858) 831-7900

WITNESSETH, that the Contractor and the Commission for the consideration stated herein mutually agree as follows:

ARTICLE 1. Statement of Work: The Contractor shall furnish all labor, material, equipment and services, and perform and complete all work required for emergency replacement of HVAC condensor coils at SMART Corner, in strict accordance with the Specifications. Specifications are incorporated herein by reference and made a part hereof. This Contract was solicited via non-competitive procurement. A sole source justification can be located in the Commission's files.

ARTICLE 2. The Contract Price: The Commission shall pay the Contractor for all performance of the Contract, in current funds, subject to additions and deductions as provided in the Specifications, the sum of One Hundred Thirty Five Thousand Seven Hundred Twenty Eight Dollars (\$135,728.00).

ARTICLE 3. Indemnity: Subject only to the limitations of the applicable statutes of limitations as contained within applicable Federal and State law, Contractor agrees to and shall indemnify, hold harmless, and defend, the Commission, the Housing Authority of the City of San Diego, the City of San Diego, and all commissioners, officers, employees, members, council members and agents of each public agency (hereinafter collectively referred to as the "Indemnitees" or individually as an "Indemnatee") from and against any and all damages, liabilities, claims, fines, fees, costs, penalties, judgments, complaints, causes of action, actions, and demands, including, without limitation, demands arising from injuries to or death of persons (Contractor's employees included) and damage to real or personal property, or any other losses, damages or expenses, arising directly or indirectly out of the acts, failure to act or negligence of the Contractor, all obligations of this Contract, or out of the operations conducted by Contractor including those in part due to the negligence of any of the Indemnitees save and except for liabilities, claims, judgments or demands arising through the sole negligence or sole willful misconduct of such Indemnatee or resulting from defects in design furnished by Indemnatee and Contractor will, if requested by Indemnatee, defend any such suits against Indemnatee(s) , at the sole cost

and expense of Contractor, with counsel of Indemnatee's choosing. This defense and indemnity provision shall not be interpreted as an agreement allowing the prevailing party in litigation concerning this Contract to receive attorneys' fees. Further, therefore, the provisions of Civil Code Section 1717 shall not be applicable to this Contract.

ARTICLE 4. Governing Law: This Contract and the obligations of the parties hereunder shall be interpreted, construed and enforced in accordance with the laws of the State of California.

ARTICLE 5. Entire Agreement: This Contract contains the entire agreement between the parties. No variations, modifications, or changes hereto shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party. All prior negotiations, representations and/or agreements between the parties relative to the subject matters hereof shall be superseded hereby and of no further force and effect.

ARTICLE 6. Waiver: No consent or waiver, expressed or implied by either party to or of any breach or default by the other in the performance by the other of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of such other party hereunder. Failure on the part of either party to complain of any such act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

ARTICLE 7. Severability: If any provision of this Contract or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Contract and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.

ARTICLE 8. Terminology: All personal pronouns used in this Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of paragraphs are for convenience only, and neither limits nor amplifies the provisions of the Contract itself, and all references herein to paragraphs thereof are to this Contract unless specific reference is made to such paragraphs of another document or instrument.

ARTICLE 9. Binding Agreement: Subject to any restrictions on the assignment of this Contract or rights thereto, this Contract shall inure to the benefit of and be binding upon Commission and Contractor and their respective successors, assigns or transferees.

ARTICLE 10. Procedure for Resolving Disputes: In the event of a dispute concerning this Contract, the same shall be resolved in San Diego Superior Court, Downtown Branch.

ARTICLE 11. Time is of the Essence: Time is of the essence in this Contract, as per the schedule submitted by Contractor and agreed upon by Commission.

ARTICLE 12. Liquidated Damages: As actual damages for any delay in completion are impossible to determine, the Contractor and his sureties shall be liable for and shall pay to the Commission monies in accordance with Clause 33 of General Conditions as fixed, agreed and liquidated damages for each calendar day of delay until the work is completed and accepted by the Commission.

ARTICLE 13. Contract Documents: This Contract shall consist of the following component parts:

- a. This Instrument
- b. General Conditions which is attached hereto as Exhibit 1 and is incorporated by reference.
- c. Special Conditions which is attached hereto as Exhibit 2 and is incorporated by reference.

d. Prevailing Wage Documents which is attached hereto as Exhibit 3 and is incorporated by reference.

e. Technical Specifications which is attached hereto as Exhibit 4 and is incorporated by reference.

f. Performance Bond & Payment Bond which is attached hereto as Exhibit 5 and is incorporated by reference.

This instrument, together with the other documents enumerated in Article 13, form the Contract and are as fully a part of the Contract as if hereto attached or herein repeated. The various provisions in Addenda shall be construed in the order of preference of the component part of the Contract which each modifies.

ARTICLE 14. Drug-Free Workplace: Contractor shall certify to the Commission that it will provide a drug-free workplace and do each of the following:

A. Publish a statement notifying its employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance as defined in schedules I-V of Section 202 of the Controlled Substance Act (21 U.S.C. 812) is prohibited in Contractor's workplace and specify the actions that will be taken against employees for violation of the prohibition.

B. Establish a drug-free awareness program to inform employees about all of the following:

- 1) The dangers of drug abuse in the workplace.
- 2) The Contractor's policy of maintaining a drug-free workplace.
- 3) Any available drug counseling, rehabilitation and employee assistance programs.
- 4) The penalties that may be imposed upon employees for drug abuse violations.

C. Post the statement required by subdivision A in a prominent place at Contractor's main office and at any job site large enough to necessitate an on-site office.

ARTICLE 15. Equal Opportunity Programs: During the performance of this Contract, the Contractor agrees as follows:

A. Contractor shall comply with all applicable local, state and federal Equal Opportunity Program requirements, as well as any other applicable local, state and federal law. Each month, the Contractor will report to the project manager, payments made to all vendors by month, contract to date, and percentage of overall contract value.

B. Contractor and each subcontractor, if any, shall fully comply with and shall submit a Work Force Report and a Certificate of Compliance certifying compliance with Executive Order 11246, as amended, 41 CFR 60-1.4(a); Title VI [Non-Discrimination in Federally Assisted Programs]; Title VII [Equal Employment Opportunity] of the Civil Rights Act of 1964, as amended; the California Fair Employment and Housing Act; the Vietnam Era Veterans' Readjustment Assistance Act, 41 CFR 60-300.5(a); Section 503 of the Rehabilitation Act of 1973, 41 CFR 60-741.5(a); and Age Discrimination in Employment Act of 1967; as applicable, and any other applicable federal and state laws and regulations currently in existence, or hereinafter enacted.

C. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, gender, disability or national origin or any other basis prohibited by law. Contractor shall ensure that applicants for employment and employees are treated equally

without regard to their race, color, religion, ancestry, gender, disability or national origin or any other basis prohibited by law.

D. If any underrepresentation is found after submission of Contractor's Work Force Report, the Commission may request an Equal Employment Opportunity Plan (EEO Plan). An acceptable plan to address the identified underrepresented categories must be submitted within thirty (30) days. Once the EEO Plan has been approved by the Commission, the Contractor must adhere to said plan. In the case of multi-year contracts, the Contractor will be required to submit annual Work Force Reports and EEO Plan updates as requested.

E. Contractor understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in penalties provided for in state and federal law. In addition, the Contractor may, at the election of the Commission, be disbarred from participating in Commission projects for not less than one (1) year.

ARTICLE 16. Lobbying Provisions: Contractor hereby certifies to the Commission, under penalty of perjury, under the terms of applicable federal law, that at all applicable times before, during and after the term of the Contract, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or modification of a Federal contract, grant, loan or cooperative agreement;

B. If any funds other than Federal appropriated funds have been paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions;

C. Contractor will require that the above stated language be included in the award documents for all subawards at all tiers, including subcontracts, subgrants, loans, contracts, and cooperative agreements concerning the subject matter of this Contract; and,

D. Further, Contractor and all subrecipients, at all times, shall certify compliance with the provisions of 31 U.S.C. 1352 and any and all terms and conditions of the Byrd Anti-Lobbying Amendment, as amended from time to time.

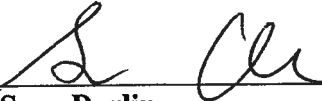
ARTICLE 17. Necessary Approvals:

A. In the event that the initial amount of this Contract equals or exceeds Two Hundred Fifty Thousand Dollars (\$250,000.00), this Contract must be approved by the Housing Authority in order to be binding upon the Commission. In no event shall the Commission be bound by this Contract, unless and until such approval is obtained.


B. In the event that the initial amount of this Agreement equals or exceeds One Hundred Thousand Dollars (\$100,000.00), this Agreement must be approved by the Board of Commissioners of the Commission in order to be binding upon the Commission. The Commission will seek ratification of this agreement at the October 7, 2016 meeting with the Board of Commissioners. In no event shall the Commission be bound by this Contract, unless and until such approval is obtained

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in original counterparts as of the day and year first above written.


Contractor:
JACKSON & BLANC

By: 
Sean Devlin
Service Project Sales Consultant
Date: 9-7-2016

Commission:
SAN DIEGO HOUSING COMMISSION

By: 
Jeff Davis
Executive VP & Chief Operating Officer
Date: 9-29-16

Approved as to Form:
Christensen & Spath LLP

By: 
Charles B. Christensen *watcher*
General Counsel *SP/NTM*

San Diego Housing Commission

Date: _____

Exhibit 1

GENERAL CONDITIONS
FOR CONSTRUCTION

Contracts – Public Housing Programs

This Contract is funded using local funds. Sections 40, 46, 47 will not apply to this project, and as indicated in Exhibit D- state prevailing wage will apply.

SAN DIEGO HOUSING COMMISSION

General Conditions for Construction Contracts – Public Housing Programs

U.S. Department of Housing and Urban
Development
Office of Public and Indian Housing
OMB Approval No. 2577-0157 (exp. 12/31/2011)

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

The form is used by Housing Authorities in solicitations to provide necessary contract clauses. If the form were not used, HAs would be unable to enforce their contracts. Public reporting burden for this collection of information is estimated to average 1.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Responses to the collection of information are required to obtain a benefit or to retain a benefit.

The information requested does not lend itself to confidentiality.

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

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1) Definitions

- a) "Architect means the person or other entity engaged by the PHA to perform architectural, engineering design and other services related to the work as provided for in the contract. When a PHA uses an engineer to act in this capacity, the terms "architect" and "engineer" shall be synonymous. The Architect shall serve as a technical representative of the Contracting Officer. The Architect's authority is set forth elsewhere in this contract.
- b) "Contract" means the contract entered into between the PHA and the Contractor. It includes the forms of Bid, the Bid Bond, the Performance and Payment Bond or
- c) or other assurance of completion, the Certifications, Representations and Other Statements of Bidders (form HUD-5370), these General Conditions of the Contract for Construction (form HUD-5370), the applicable wage rate determinations from the U.S. Department of Labor, any special conditions included elsewhere in the contract, the specifications, and drawings. It includes all formal changes to any of those documents by addendum, change order, or other modification.
- d) "Contracting Officer" means the person delegated the authority by the PHA to enter into, administer, and/or terminate this contract and designated as such in writing to the Contractor. The term includes any successor Contracting Officer and any duly authorized representative of the Contracting Officer also designated in writing. The Contracting Officer shall be deemed the authorized agent of the PHA in all dealings with the Contractor
- e) "Contractor" means the person or other entity entering into the contract with the PHA to perform all of the work required under contract.
- f) "Drawings" means the drawings enumerated in the schedule of drawings contained in the Specifications and Drawings for Construction herein.
- g) "HUD" means the United States of America acting through the Department of Housing and Urban Development including the Secretary, or any other person designated to act on its behalf. HUD has agreed, subject to the provisions of an Annual Contributions Contract (ACC), to provide financial assistance to the PHA, which includes assistance in financing the work to be performed under this contract. As defined elsewhere in these General Conditions or the contract documents, the determination of HUD may be required to authorize changes in the work or release of funds to the PHA for payment to the Contractor. Notwithstanding HUD's role, nothing in this contract shall be construed to relate any contractual relationship between the Contractor and HUD.
- h) "Project" means the entire project, whether construction or rehabilitation, the work for which is provided for in whole or in part under this contract.

- i) "PHA" means the Public Agency organized under applicable state laws which is a party to this contract.
- j) "Specifications" means the written description of the technical requirements for construction and includes the criteria and tests for determining whether the requirements are met.
- k) "Work" means materials, workmanship, and manufacture and fabrication of components.

2) Contractor's Responsibility for Work

- a) The Contractor shall furnish all necessary labor, materials, tools, equipment, and transportation necessary to performance of the work. The Contractor shall also furnish all necessary water, heat, light, and power not made available to the Contractor by the PHA pursuant to the clause entitled Availability and Use of Utility Services herein.
- b) The Contractor shall perform on the site, and with its own organization, work equivalent to at least [] (12 percent unless otherwise indicated) of the total amount of work to be performed under the order. This percentage may be reduced by a supplemental agreement to this order if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the PHA.
- c) At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.
- d) The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall hold and save the PHA, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.
- e) The Contractor shall lay out the work from base lines and benchmarks indicated on the drawings and be responsible for all lines, levels, and measurements of all work executed under the contract. The Contractor shall verify the figures before laying out the work and will be held responsible for any error resulting from its failure to do so.
- f) The Contractor shall confine all operations (including storage of materials) on PHA premises to areas authorized or approved by the Contracting Officer.
- g) The Contractor shall at all times keep the work area, including storage areas, free from accumulations of

waste materials. After completing the work and before final inspection, the Contractor shall (1) remove from the premises all scaffolding, equipment, tools, and materials (including rejected materials) that are not the property of the PHA and all rubbish caused by its work; (2) leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer; (3) perform all specified tests; and, (4) deliver the installation in complete and operating condition.

- h) The Contractor's responsibility will terminate when all work has been completed, the final inspection made, and the work accepted by the Contracting Officer. The Contractor will then be released from further obligation except as required by the warranties specified elsewhere in the contract.

3) Architect's Duties, Responsibilities, and Authority

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

with respect to acceptance of work completed under the contract.

4) Other Contracts

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

CONSTRUCTION REQUIREMENTS

5) Pre-construction Conference and Notice to Proceed

- a) Within **10 calendar days** of **contract execution**, and prior to the commencement of work, the Contractor shall attend a pre-construction conference with representatives of the PHA, its Architect, and other interested parties convened by the PHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract. The PHA will provide the Contractor with the date, time, and place of the conference.
- b) The contractor shall begin work upon receipt of a written Notice to Proceed from the Contracting Officer or designee. The Contractor shall not begin work prior to receiving such notice.

6) Construction Progress Schedule

- a) The Contractor shall, within **5 days** after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring labor, materials, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the **Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments** or take other remedies under the contract until the Contractor submits the required schedule.
- b) The Contractor shall enter the actual progress on the chart as required by the Contracting Officer, and immediately deliver three copies of the annotated schedule to the Contracting Officer. If the Contracting Officer determines, upon the basis of

inspection conducted pursuant to the clause entitled inspection and Acceptance of Construction, herein that the Contractor is not meeting the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the PHA. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plan, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

- c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the Default clause of this contract.

7) Site Investigation and Conditions Affecting the Work

- a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to, (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the PHA, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the PHA.

- b) The PHA assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the PHA. Nor does the PHA assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officer or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

8) Differing Site Conditions

- a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site(s), of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.
- b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. Work shall not proceed at the affected site, except at the Contractor's risk, until the Contracting Officer has provided written instruction to the Contractor. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, the Contractor shall file a claim in writing to the PHA within 10 days after receipt of such instructions and, in any event, before proceeding with the work. An equitable adjustment in the contract price, the delivery schedule, or both shall be made under this clause and the contract modified in writing accordingly.
- c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.
- d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

9) Specifications and Drawings for Construction

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

the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

- b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved," "acceptable", "satisfactory", or words of like import shall mean "approved by", or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.
- c) Where "as shown", "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place" that is "furnished and installed".
- d) "Shop drawings" means drawings, submitted to the PHA by the Contractor, subcontractor, or any lower tier subcontractor, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the Contract.
- e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with other contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the PHA's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with

the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

- f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Architect approves any such variation and the Contracting Officer concurs, the Contracting Officer shall issue an appropriate modification to the contract, except that, if the variations is minor or does not involve a change in price or in time of performance, a modification need not be issued.
- g) It shall be the responsibility of the Contractor to make timely requests of the PHA for such large scale and full size drawings, color schemes, and other additional information, not already in his possession, which shall be required in the planning and production of the work. Such requests may be submitted as the need arises, but each such request shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay.
- h) The Contractor shall submit to the Contracting Officer for approval of four copies (unless otherwise indicated) or all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by PHA and one set will be returned to the Contractor. As required by the Contracting Officer, the Contractor, upon completing the work under this contract, shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the work is completed and accepted.
- i) This clause shall be included in all subcontract at any tier. It shall be the responsibility of the Contractor to ensure that all shop drawings prepared by subcontractors are submitted to the Contracting Officer.

10) As-Built Drawings

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

improvements such as buildings, curbs, or edges of walks.

- c) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all as-built drawings prepared by subcontractors are submitted to the Contracting Officer.

11) Material and Workmanship

- a) All equipment, material, and articles furnished under this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the contract to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of, and as approved by the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.
- b) Approval of equipment and materials.
 - 1) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated in the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.
 - 2) When required by the specifications or the Contracting Officer, the Contractor shall submit appropriately marked samples (and certificates related to them) for approval at the Contractor's expense, with all shipping charges prepaid. The Contractor shall label, or otherwise properly mark on the container, the material or product represented, its place of origin, the name of the producer, the Contractor's name, and the identification of the construction project for which the material or product is intended to be used.

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

12) Permits and Codes

- a) The Contractor shall give all notices and comply with all applicable laws, ordinances, codes, rules and regulations. Notwithstanding the requirement of the Contractor to comply with the drawings and specifications in the contract, all work installed shall comply with all applicable codes and regulations as amended by any waivers. Before installing the work, the Contractor shall examine the drawings and the specifications for compliance with applicable codes and regulations bearing on the work and shall immediately report any discrepancy it may discover

to the Contracting Officer. Where the requirements of the drawings and specifications fail to comply with the applicable code or regulation, the Contracting Officer shall modify the contract by change order pursuant to the clause entitled changes herein to conform to code or regulation.

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

13) Health, Safety, and Accident Prevention

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

claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

- e) The Contractor shall be responsible for its subcontractors' compliance with the provisions of this clause. The Contractor shall take such action with respect to any subcontract as the PHA, the Secretary of Housing and Urban Development, or the Secretary of Labor shall direct as a means of enforcing such provisions.

14) Temporary Heating

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

15) Availability and Use of Utility Services

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

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

- a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs and grass) on or adjacent to the work site, which are not to be removed under this contract, and which do not unreasonably interfere with the work required under this contract.
- b) The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance of this contract, or by the careless

operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree pruning compound as directed by the Contracting Officer.

- c) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. Prior to distributing the ground at the construction site, the Contractor shall ensure that all underground utility lines are clearly marked.
- d) The Contractor shall shore up, brace, underpin, secure, and protect as necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected by the excavations or other operations connected with the construction of the project.
- e) Any equipment temporarily removed as a result of work under this contract shall be protected, cleaned, and replaced in the same condition as at the time of award of this contract.
- f) New work which connects to existing work shall correspond in all respects with that to which it connects and/or be similar to existing work unless otherwise required by the specifications.
- g) No structural members shall be altered or in any way weakened without the written authorization of the Contracting Officer, unless such work is clearly specified in the plans or specifications.
- h) If the removal of the existing work exposes discolored or unfinished surfaces, or work out of alignment, such surfaces shall be refinished, or the material replaced as necessary to make the continuous work uniform and harmonious. This, however, shall not be construed to require the refinishing or reconstruction of dissimilar finishes previously exposed, or finished surfaces in good condition, but in different planes or on different levels when brought together by the removal of intervening work, unless such refinishing or reconstruction is specified in the plans or specifications.
- i) The Contractor shall give all required notices to any adjoining or adjacent property owner or other party before the commencement of any work.
- j) The Contractor shall indemnify and save harmless the PHA from any damages on account of settlement or the loss of lateral support of adjoining property, in any damages from changes in topography affecting drainage, and from all loss or expense and all damages for which the PHA may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.
- k) The Contractor shall repair any damage to vegetation, structures, equipment, utilities, or improvements, including those that are the property

of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

17) Temporary Buildings and Transportation of Materials

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

18) Clean Air and Water

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

19) Energy Efficiency

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

20) Inspection and Acceptance of Construction

- a) Definitions. As used in this clause –
 - 1) "Acceptance" means the act of an authorized representative of the PHA by which the PHA approves and assumes ownership of the work

performed under this contract. Acceptance may be partial or complete.

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

Contractor shall promptly segregate and remove rejected material from the premises.

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

21) Use and Possession Prior to Completion

- a) The PHA shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the PHA intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The PHA's possession or use shall not be deemed an acceptance of any work under the contract.
- b) While the PHA has such possession or use, the Contractor shall be relieved of the responsibility for

(1) the loss of or damage to the work resulting from the PHA's possession or use, notwithstanding the terms of the clause entitled Permits and Codes herein; (2) all maintenance costs on the areas occupied; and, (3) furnishing heat, light, power and water used in the areas occupied without proper remuneration therefore. If prior possession or use by the PHA delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

22) Warranty of Title

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

23) Warranty of Construction

- a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any subcontractor or supplier at any tier. This warranty shall continue for a period of **five (5) years** (*one year unless otherwise indicated*) from the date of final acceptance of the work. If the PHA takes possession of any part of the work before final acceptance, this warranty shall continue for a period of **five (5) years** (*one year unless otherwise indicated*) from the date that the PHA takes possession.
- b) The Contractor shall remedy, at the Contractor's expense, any failure to conform, or any defect. In addition, the Contractor shall remedy, at the Contractor's expense, any damage to PHA-owned or controlled real or personal property when the damage is the result of –
 - 1) The Contractor's failure to conform to contract requirements; or
 - 2) Any defects of equipment, material, workmanship or design furnished by the Contractor.
- c) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for **five (5) years** (*one year unless otherwise indicated*) from the date of repair or replacement.
- d) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect or damage.

- e) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the PHA shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- f) With respect to all warranties, expressed or implied, from subcontractors, manufacturers or suppliers for work performed and materials furnished under this contract, the Contractor shall:
 - 1) **Obtain all warranties** that would be given in normal commercial practice;
 - 2) Require all warranties to be executed in writing, for the benefit of the PHA; and,
 - 3) Enforce all warranties for the benefit of the PHA.
- g) In the event the Contractor's warranty under paragraph (a) of this clause has expired, the PHA may bring suit at its own expense to enforce a subcontractor's manufacturer's or supplier's warranty.
- h) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defect of material or design furnished by the PHA nor for the repair of any damage that results from any defect in PHA furnished material or design.
- i) Notwithstanding any provisions herein to the contrary, the establishment of the time periods in paragraphs (a) and (c) above relate only to the specific obligation of the Contractor to correct the work, and have no relationship to the time within which its obligation to comply with the contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligation other than specifically to correct the work.
- j) This warranty shall not limit the PHA's rights under the Inspection and Acceptance of Construction clause of this contract with respect to latent defects, gross mistakes or fraud.

24) Prohibition Against Liens

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

ADMINISTRATIVE REQUIREMENTS

25) Contract Period

The Contractor shall complete all work required under this contract within **30 calendar days**, of the effective date of the contract, **in accordance with Clause 33 'Liquidated Damages,'** and within the time schedule established in the **notice to proceed** issued by the Contracting Officer.

26) Order of Provisions

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

27) Payments

- a) The PHA shall pay the Contractor the price as provided in this contract.
- b) The PHA shall make **progress payments** approximately every **30 days** as the work proceeds, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. The PHA may, subject to written determination and approval of the Contracting Officer, make more frequent payments to contractors which are **qualified small business**.
- c) Before the first progress payment under this contract, the Contractor shall furnish, in such detail as requested by the Contracting Officer, a breakdown of the total contract price showing the amount included therein for each principal category of the work, which shall substantiate the payment amount requested in order to provide a basis for determining progress payments. The breakdown shall be approved by the Contracting Officer and must be acceptable to HUD. **If the contract covers more than one project, the Contractor shall furnish a separate breakdown for each.** The values and quantities employed in making up this breakdown are for determining the amount of progress payments and shall not be construed as a basis for additions to or deductions from the contract price. The Contractor shall prorate its overhead and profit over the construction period of the contract.
- d) The Contractor shall submit, on forms provided by the PHA, periodic estimates showing the value of the work performed during each period based upon the approved breakdown of the contract price. **Such estimates shall be submitted no later than 10 days in advance of the date set for payment and are subject to correction and revision as required.** The estimates must be approved by the Contracting Officer with the concurrence of the Architect prior to payment. If the contract covers more than one project, the Contractor shall furnish a separate progress payment estimate for each.
- e) Along with each request for progress payments and the required estimates, the Contractor shall furnish

the following certification, or payment shall not be made:

I hereby certify, to the best of my knowledge and belief, that:

- 1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;
- 2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements; and,
- 3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

SEAN DEVLIN
Name:
SALES CONSULTANT
Title:
9-7-2016
Date:

- f) Except as otherwise provided in State law, the PHA shall retain **ten (10) percent** of the amount of progress payments until completion and acceptance of all work under contract; except, that if upon completion of 50 percent of the work, the Contracting Officer, after consulting with the Architect, determines that the Contractor's performance and progress are satisfactory, the PHA may make the remaining payments in full for the work subsequently completed. If the Contracting Officer subsequently determines that the Contractor's performance and progress are unsatisfactory, the PHA shall reinstate the **five (5) percent (or other percentage as provided in State law)** retainage until such time as the Contracting Officer determines that performance and progress are satisfactory.
- g) The Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration when computing progress payments. Material delivered to the Contractor at locations other than the site may also be taken into consideration if the Contractor furnishes satisfactory evidence that (1) it has acquired title to such material; (2) the material is properly stored in a bonded warehouse, storage yard, or similar suitable place as may be approved by the Contracting Officer; (3) the material is insured to cover its full value; and (4) the material will be used to perform this contract. Before any progress

payment which includes delivered material is made, the Contractor shall furnish such documentation as the Contracting Officer may require to assure the protection of the PHA's interest in such materials. The Contractor shall remain responsible for such stored material notwithstanding the transfer of title to the PHA.

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

28) Contract Modifications

- a) Only the Contracting Officer has authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing.

- b) The Contracting Officer may modify the contract unilaterally (1) pursuant to a specific authorization stated in a contract clause (e.g. Changes); or (2) for administrative matters which do not change the rights or responsibilities of the parties (e.g., change in the PHA address). All other contract modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer.
- c) When a proposed modification requires the approval of HUD prior to its issuance (e.g., a change order that exceeds the PHA's approved threshold), such modification shall not be effective until the required approval is received by the PHA.

29) Changes

- a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract including changes:
 - 1) In the specifications (including drawings and designs);
 - 2) In the method or manner of performance of the work;
 - 3) PHA-furnished facilities, equipment, materials, services, or site; or,
 - 4) Directing the acceleration in the performance of the work.
- b) Any other written order by oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances and source of the order and (2) that the Contractor regards the order as a change order.
- c) Except as provided in this clause, no order, statement or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.
- d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days (5 days for oral orders) before the Contractor gives written notice as required. In the case of defective specifications for which the PHA is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

- e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause, or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting a written statement describing the general nature and the amount of the proposal. If the facts justify it, the Contracting Officer may extend the period for submission. The proposal may be included in the notice required under paragraph (b) above. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.
 - f) The Contractor's written proposal for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following details:
 - 1) Direct Costs. Materials (list of individual items, the quantity and unit cost of each, and the aggregate cost); Transportation and delivery costs associated with materials; Labor breakdowns by hours or unit costs (identified with specific work to be performed); Construction equipment exclusively necessary for the change; Costs of preparation and/or revision to shop drawings resulting from the change; Worker's Compensation and Public Liability Insurance; Employment taxes under FICA and FUTA; and Bond costs when size of change warrants revision.
 - 2) Indirect Costs. Indirect costs may include overhead, general and administrative expenses, and fringe benefits not normally treated as direct costs.
 - 3) Profit. The amount of profit shall be negotiated and may vary according to the nature, extent, and complexity of the work required by the change. The allowability of the direct and indirect costs shall be determined in accordance with the Contract Cost Principles and Procedures for Commercial Firms in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31), as implemented by HUD Handbook 2210.18, in effect on the date of this contract. The Contractor shall not be allowed a profit on the profit received by any subcontractor. Equitable adjustments for deleted work shall include a credit for profit and may include a credit for indirect costs. On proposals covering both increases and decreases in the amount of the contract, the application of indirect costs and profit shall be on the net-change in direct costs for the Contractor or subcontractor performing the work.
 - g) The Contractor shall include in the proposal its request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the contract in its entirety.
 - h) The Contracting Officer shall act on proposals within 30 days after their receipt, or notify the Contractor of the date when such action will be taken.
 - i) Failure to reach an agreement on any proposal shall be a dispute under the clause entitled Disputes herein. Nothing in this clause, however, shall excuse the Contractor from proceeding with the contract as changed.
 - j) Except in an emergency endangering life or property, no change shall be made by the Contractor without a prior order from the Contracting Officer.
- 30) Suspension of Work**
- a) The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the PHA.
 - b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract or (2) by the Contracting Officer's failure to act within the time specified (or within a reasonable time if not specified) in this contract an adjustment shall be made for any increase in the cost of performance of the contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor for which any equitable adjustment is provided for or excluded under any other provision of this contract.
 - c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and, (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.
- 31) Disputes**
- a) "Claim" as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under the contract, unlike a claim relating to

the contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by complying with the requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

- b) Except for disputes arising under the clauses entitled Labor Standards – Davis Bacon and Related Acts, herein, all disputes arising under or relating to this contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.
- c) All claims by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the PHA against the Contractor shall be subject to a written decision by the Contracting Officer.
- d) The Contracting Officer shall, within 60 (*unless otherwise indicated*) days after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made.
- e) The Contracting Officer's decision shall be final unless the Contractor (1) appeals in writing to a higher level in the PHA in accordance with the PHA's policy and procedures, (2) refers the appeal to an independent mediator or arbitrator, or (3) files suit in a court of competent jurisdiction. Such appeal must be made within (30 *unless otherwise indicated*) days after receipt of the Contracting Officer's decision.
- f) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

32) Default

- a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with the diligence that will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within this time, the Contracting Officer may, by written notice to the Contractor, terminate the right to proceed with the work (or separable part of the work) that has been delayed. In this event, the PHA may take over the work and complete it, by contract or otherwise, and may take possession of and use any materials, equipment, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the PHA resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is

terminated. This liability includes any increased costs incurred by the PHA in completing the work.

- b) The Contractor's right to proceed shall not be terminated or the Contractor charged with damages under this clause –

- 1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God, or of the public enemy, (ii) acts of the PHA or other governmental entity in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the PHA, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays in subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

- 2) The Contractor, within days (10 days *unless otherwise indicated*) from the beginning of such delay (*unless extended by the Contracting Officer*) notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, time for completing the work shall be extended by written modification to the contract. The findings of the Contracting Officer shall be reduced to a written decision which shall be subject to the provisions of the Disputes clause of this contract.

- c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been for convenience of the PHA.

33) Liquidated Damages

- a) If the Contractor fails to complete the work within the time specified in the contract, or any extension, as specified in the clause entitled Default of this contract, the Contractor shall pay to the PHA as liquidated damages, the sum of *\$250.00 per day Work to commence on October 14, 2016 and work to be completed by October 17, 2016. Liquidated damages will accrue after October 19, 2016. To the extent that the Contractor's delay or nonperformance is excused under another clause in this contract, liquidated damages shall not be due the PHA. The Contractor remains liable for damages caused other than by delay,

*Revised 9/20/2016

remains liable for damages caused other than by delay.

- b) If the PHA terminates the Contractor's right to proceed the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the PHA in completing the work.
- c) If the PHA does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidate damages until the work is completed or accepted.

34) Termination for Convenience

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

35) Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the PHA under the contract may be assigned to a bank, trust company, or other financial

institution. Such assignments of claims shall only be made with the written concurrence of the Contracting Officer. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership as approved by the Contracting Officer.

36) Insurance

- a) Before commencing work, the Contractor and each subcontractor shall furnish the PHA with certificates of insurance showing the following insurance is in force and will insure all operations under the Contract:
 - 1) **Worker's Compensation**, in accordance with state or Territorial Worker's Compensation laws.
 - 2) **Commercial General Liability** with a combined single limit for bodily injury and property damage of not less than **\$5,000,000.00** per occurrence to protect the Contractor and each subcontractor against claims for bodily injury or death and damage to the property of others. This shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under (3) below. If the Contractor has a "claims-made" policy, then the following additional requirements apply: the policy must provide a "retroactive date" which must be on or before the execution date of the Contract; and the extended reporting period may not be less than five years following the completion date of the Contract.
 - 3) **Automobile Liability** on owned and non-owned motor vehicles used on the site(s) or in connection therewith for a combined single limit for bodily injury and property damage of not less than **\$500,000.00** per occurrence.
- b) Before commencing work, the Contractor shall furnish the PHA with a certificate of insurance evidencing that Builder's Risk (fire and extended coverage) insurance on all work in place and/or materials stored at the building site(s), including foundations and building equipment, is in force. The Builder's Risk Insurance shall be for the benefit of the Contractor and the PHA as their interests may appear and each shall be named in the policy of policies as an insured. The Contractor in installing equipment supplied by the PHA shall carry insurance on such equipment from the time the Contractor takes possession thereof until the Contract work is accepted by the PHA. The Builder's Risk Insurance need not be carried on excavations, piers, footings, or foundations until such time as work on the superstructure is started. It need not be carried on landscape work. Policies shall furnish coverage at all times for the full cash value of all completed construction, as well as materials in place

and/or stores at the site(s), whether or not partial payment has been made by the PHA. The Contractor may terminate this insurance on buildings as of the date taken over for occupancy by the PHA. The Contractor is not required to carry Builder's Risk Insurance for modernization work which does not involve structural alterations or additions and where the PHA's existing fire and extended coverage policy can be endorsed to include such work.

- c) All insurance shall be carried with companies which are financially responsible and admitted to do business in the State in which the project is located. If any such insurance is due to expire during the construction period, the Contractor (including subcontractors, as applicable) shall not permit the coverage to lapse and shall furnish evidence of coverage to the Contracting Officer. All certificates of insurance, as evidence of coverage, shall provide that no coverage may be canceled or non-renewed by the insurance company until at least 30 days prior written notice has been given to the Contracting Officer.

37) Subcontracts

- a) Definitions. As used in this contract –
 - 1) "Subcontract" means any contract, purchase order, or other purchase agreement, including modifications and change orders to the foregoing, entered into by a subcontractor to furnish supplies, materials, equipment, and services for the performance of the prime contractor a subcontract.
 - 2) "Subcontractor" means any supplier, vendor, or firm that furnishes supplies, materials, equipment, or services to or for the Contractor or another subcontractor.
- b) The Contractor shall not enter into any subcontract with any subcontractor who has been temporarily denied participation in a HUD program or who has been suspended or debarred from participating in contracting programs by any agency of the United States Government or of the state in which the work under this contract is to be performed.
- c) The Contractor shall be as fully responsible for the acts or omissions of its subcontractors, and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Contractor.
- d) The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this contract insofar as they are applicable to the work of subcontractors.
- e) Nothing contained in this contract shall create any contractual relationship between any subcontractor and the PHA or between the subcontractor and HUD.

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

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

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

39) Equal Employment Opportunity

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

- a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or handicap.
- b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, or handicap. Such action shall include, but not be limited to (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship.
- c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or handicap.
- e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the

Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

- f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- h) In the event of a determination that the Contractor is not in Compliance with his clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or Federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.
- j) Compliance with the requirements of this clause shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education

Assistance Act and the Indian Preference clause of this contract.

40) Employment, Training, and Contracting Opportunities for Law-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 CRR Part 135.

- e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- g) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

41) Interest of Members of Congress

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

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

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

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

- a) The Contractor agrees to comply with Section 1352 of Title 31, United States Code which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer

or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

- b) The Contractor further agrees to comply with the requirement of the Act to furnish a disclosure (OMB Standard Form LLL, Disclosure of Lobbying Activities) if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an office or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

44) Royalties and Patents

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

45) Examination and Retention of Contractor's Records

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

substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.

- c) The periods of access and examination in paragraphs (a) and (b) above for records relating to (1) appeals under the Disputes clause of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the PHA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

46) Labor Standards – Davis-Bacon and Related Acts

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

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

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

- 2) (i) Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met: (A) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (B) The classification is utilized in the area by the construction industry; and (C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employee Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify

HUD or its designee within the 30-day period that additional time is necessary.

(iii) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

(iv) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (a)(2)(ii) or (iii) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in classification.

- 3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- 4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

b) **Withholding of funds.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working in the construction or development of the project, all or part of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

c) **Payrolls and basic records.**

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

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

- 2) (i) The Contractor shall **submit weekly** for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1214-0149.)
- (ii) Each payroll submitted shall be accompanied by a **"Statement of Compliance,"** signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (a) That the payroll for the payroll period contains the information required to be maintained under **paragraph (c) (1) of this clause and that such information is correct and complete;**
- (b) That each **laborer or mechanic** (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid in **full weekly wages earned, without rebate, either directly or indirectly, and that no**

deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and

- (c) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (iii) The weekly submission of a **properly executed certification** set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by subparagraph (c)(2)(ii) of this clause.
- (iv) The **falsification** of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- 3) The contractor or subcontractor shall make the records required under subparagraph (c)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.
- d) (1) **Apprentices.** Apprentices will be permitted to **work at less than the predetermined rate** for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually

registered in the program, but who has been certified by OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journey men on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

(3) **Equal Employment Opportunity.** The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

- e) **Compliance with Copeland Act requirements.** The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.
- f) **Contract termination; debarment.** A breach of this contract clause may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.
- g) **Compliance with Davis-Bacon and related Act requirements.** All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

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

i) **Certification of eligibility.**

- (1) By entering into this contract, the Contractor certifies that neither it (nor he or she) or any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a United States Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

j) **Contract Work Hours and Safety Standards Act.** As used in the paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

- (1) **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in subparagraph (j)(1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such

Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic (including watchmen and guards) employed in violation of the provisions set forth in subparagraph (j)(1) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in subparagraph (j)(1) of this clause.

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

- j. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause, and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.

47) Non-Federal Prevailing Wage Rates

- a) Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under State or tribal law to be prevailing, with respect to any employee in any trade or position employed under the contract, is inapplicable to the contract and shall

not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate exceeds: (1) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141 et seq.) to be prevailing in the locality with respect to such trade;

- b) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor (DOL) or a DOL-recognized State Apprenticeship Agency; or
- c) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

48) Procurement of Recovered Materials.

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

END OF GENERAL CONDITIONS

Contractor hereby certifies, by the signature affixed to this document, that Contractor shall be bound by all provisions as set forth in the General Conditions herein.

CONTRACTOR:

By: SEAN DEVLIN

Title: SALES CONSULTANT

Date: 9-7-2016

Exhibit 2

SPECIAL CONDITIONS

The provisions of the Special Conditions listed below are additional requirements and/or modifications of the General Conditions. The Special Conditions shall prevail in an event of a conflict between the General Conditions and the Special Conditions.

Modifications to Clauses Contained in the General Conditions.

CLAUSE 1. Definitions.

"Architect", defined in Paragraph 1(a) is modified to mean the same as "Contracting Officer" or designee, as defined in Paragraph 1(c). Where the term "Architect" is indicated in the text of the General Conditions, modify the term to "Contracting Officer."

CLAUSE 6.a. Construction Progress Schedule

At the time of the Pre-construction Conference meeting, Contractor shall submit a draft copy of the Construction Progress Schedule (CPS) to the Contracting Officer. The CPS shall be in the Critical Path Method format. The schedule will incorporate start and finish dates and key project milestones. Furthermore, the CPS shall reflect percentages completed, progress bars, milestones, and any phasing required for performance of work under this contract. The Critical Path shall be tracked against a baseline. The critical path is to be updated on a monthly basis as work progresses.

CLAUSE 9. Specifications and Drawings for Construction, Paragraph 9

Specifications and Drawings, Paragraph 9 is amended to state:

"In case of difference between drawings and specifications, the more stringent shall apply."

CLAUSE 12. Permits and Codes, Ordinances and Codes

1. Construction and materials shall conform with applicable requirements of the documents listed in the Technical Specifications as amended to date as though they were an integral part of this specification.
 2. All work and materials shall be in full accordance with the latest rules and regulations of the California IAC; the safety orders of the Division of Industrial Safety; the National Electric Code; the Uniform Building Code, latest edition; the Federal Water Pollution Act (also referred to as the Clean Water Act (CWA)); regulations under the National Pollutant Discharge Elimination System (NPDES); the permit requirements published by U.S. Environmental Agency (USEPA) and other applicable federal and state laws or regulations. Nothing in these plans or specifications is to be construed to permit work not conforming to these codes.
 3. In any case of conflict between any of the documents mentioned above and the specifications and drawings, the highest requirements shall govern. No extras shall be allowed for any changes to make the work conform with the regulations of the above mentioned documents; they shall be considered as completely included in the contract price.
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CLAUSE 13. Health, Safety, and Accident Prevention, Safety

In accordance with generally accepted construction practices, the Contractor will be solely and completely responsible for conditions of the job site, including safety of all persons and property during performance of the work. This requirement will apply continuously and not be limited to normal work hours.

CLAUSE 20. Inspection and Acceptance of Construction, Permits and Inspections

The contractor shall secure and pay for all permits, inspection fees and licenses as necessary and or required for the proper execution and completion of the work. The San Diego Housing Commission is not a self-inspecting agency.

CLAUSE 23. Warranty of Construction

Nothing contained in paragraph 23 of the General Conditions of this contract or any of the Special Conditions or any other paragraph of this contract, shall limit the right of the San Diego Housing Commission to file a suit and/or commence an arbitration within any applicable statute of limitation period, against the Contractor for the Contractor's failure to perform to the contract requirements or for any defects in any construction, equipment, material, workmanship or design furnished pursuant to the contract, including without limitation patent defects, latent defects, mistakes, negligence or fraud. Nor shall this warranty limit the right of the San Diego Housing Commission to file a lawsuit with any applicable statute of limitations, including, without limitation, California Code of Civil Procedure Sections 338, 337, 337.1, 337.15 and any and all other applicable statutes of limitations concerning the indemnity provisions of Article 3 of the Contract and/or for breach of this contract and/or for negligence of the Contractor and/or subcontractors. Further, nothing contained herein shall preclude the San Diego Housing Commission from instituting litigation against the Contractor after the expiration of the ONE-YEAR warranty, measured from the date of the final acceptance of work, for damages, including, but not limited to, the cost of repairing and/or replacing any defects in equipment, material, workmanship and/or failure to conform with contract requirements, provided that the lawsuit and/or demand for arbitration is instituted and/or made within the applicable statutes of limitation.

It is expressly declared to be the intent of Section 23 of the General Conditions to limit the Contractor's duty to personally correct work to the ONE-YEAR period of time, but not to limit the right of the San Diego Housing Commission to institute limitation and/or demand litigation and/or arbitration after said one (1) year period to collect damages, including the cost and repair of defective construction, work, material, workmanship, equipment and design and/or failure to conform to the contract requirements by the Contractor and for any and all damages flowing out of or arising from said failure. Any ambiguity in this contract shall be construed in favor of allowing the San Diego Housing Commission to collect damages from the Contractor, to correct, replace and repair defects in construction, design, workmanship, material, equipment and/or failures to conform to contract requirements and to provide safe, decent, sanitary and defect-free housing to the members of the public.

Contractor acknowledges and agrees, that in the event that an "Emergency" or Emergencies", as hereinafter defined, are discovered and/or occur during times that the Contractor cannot immediately (defined as within one (1) hour of oral notification from the Commission) respond and take such corrective actions as are necessary to abate the cause of the emergency and/or repair the damage caused by the emergency, the Commission shall be entitled to and may, at the sole cost and expense of the Contractor, take such actions as are necessary, in the opinion of the Commission, to abate the emergency and to repair any and all damages caused by the emergency. Contractor shall, within five (5) days of the receipt of invoice(s) from the Commission reimburse the Commission and/or pay such invoice(s), as the Commission shall direct. Failure of the Contractor to so reimburse the Commission and/or pay the invoice(s) within the required time period, may, at the option of the Commission be deemed a material default under the terms of the Agreement.

CLAUSE 27. Payments

Before final payment upon this Contract is authorized and/or paid, the following requirements of contract documents shall have been fulfilled:

1. Satisfactory completion of all construction work and acceptance by the Commission and HUD.
2. Submission, by contractor to the Commission, of all required written guarantees.
3. The submission, by the Contractor to the Commission, of an affidavit, sworn to before a Notary Public, stating that all workmen and persons employed, all firms supplying the materials, and all subcontractors upon the project have been paid in full, and that there are no bills outstanding against the project for either labor or materials, except certain items, if any, to be set forth in such affidavit covering disputed claims, or items in connection with Notices to Withhold have been filed under the provisions of the Statutes of the State of California.
4. 27.(f) Except as otherwise provided in State law, the PHA shall retain five (5) percent of the amount of progress payments until completion and acceptance of all work under the contract.
5. All requests for progress payments and final payment shall be prepared and submitted to the SDHC in accordance with the General Conditions and other related Sections of the Contract Documents and shall utilize the forms and formats as identified and provided by the SDHC. The required forms for submittal of payment requests will include; but not be limited to:
 - a. Form HUD 51000 – Schedule of Amounts for Contract Payments.
 - b. Form HUD 51001 – Periodic Estimate for Partial Payment
 - c. Form HUD 51002 – Schedule of Change Orders

Along with each request for Progress payments and required estimates, the General Contractor shall furnish the Certification of Payments to Subcontractors form as required in the General Conditions, Section VI, Clause 27 (e).

Progress Payments shall be submitted electronically to the assigned Construction Manager for review and comment. Progress payment forms shall reference the project's approved Purchase Order number and all other pertinent contract related information.

Contractor shall familiarize him/herself with the required forms and procedures and submit requests in a complete and timely manner. The SDHC will not make Progress Payments of final payment without complete and property executed paperwork.

CLAUSE 33. Liquidated Damages

As actual damages for any delay in completion are impossible to determine, the Contractor and his sureties shall be liable for and shall pay to the San Diego Housing Commission monies in accordance with this Agreement as fixed and agreed, and liquidated damages for each calendar day of delay until the work is completed and accepted by the San Diego Housing Commission.

CLAUSE 36. Insurance, Insurance, Paragraph 36, (a) (2) is amended to state:

"Commercial General Liability with a combined single limit for bodily injury and property damage limits of not less than per occurrence..."

Insurance, Paragraph 36 (c) has the following addition:

"The Contractor and sub-contractor shall add as additional insured the City of San Diego, the Housing Authority of the City of San Diego, the Metropolitan Transit Board, the San Diego Housing Commission, all Commissioners, officers and employees of each public agency."

Insurance, Paragraph 36, (a) (1) is amended to state:

"Workers' Compensation, in accordance with state or Territorial Workers' Compensation laws..."

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the contractor, its employees, agents and subcontractors.

Certificate Holder for Contractor and Sub-contractor shall read: City of San Diego, the Housing Authority of the City of San Diego and the San Diego Housing Commission, 1122 Broadway, Ste. 300, San Diego, CA 92101.

All Additional Insured are to be included on all Endorsement forms for the insurance types listed above. (Only Forms CG 20 10 11 85 or CG 20 10 10 01 and CG 20 37 10 01 will be accepted).

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VIII unless otherwise acceptable to the Commission.

CLAUSE 37. Subcontracts, Section 37 of the General Conditions is hereby deleted and the following is substituted in its place and instead:

- a) Definitions. As used in this contract –
 - 1. "Subcontract" means any contract, purchase order, or other purchase agreement, including modifications and change orders to the foregoing, entered into by a subcontractor to furnish supplies, materials, equipment, and services for the performance of the prime contractor a subcontract.
 - 2. "Subcontractor" means any firm that furnishes supplies, materials, equipment, or services to or for the Contractor or another subcontractor. Subcontractor for this purpose is defined in Government Code Section 4113, which provides in pertinent part "subcontractor" shall mean a contractor, within the meaning of the provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code of the State of California, who contracts directly with the Contractor.
- b) The Contractor shall not enter into any subcontract with any subcontractor who has been temporarily denied participation in a HUD program or who has been suspended or debarred from participating in contracting programs by any agency of the United States Government or of the state in which the work under this contract is to be performed.
- c) The Contractor shall be as fully responsible for the acts or omissions of its subcontractors, and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Contractor.
- d) The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this contract insofar as they are applicable to the work of subcontractors.
- e) Nothing contained in this contract shall create any contractual relationship between any subcontractor and the PHA or between the subcontractor and HUD.

CLAUSE 46.a.1. Labor Standards and Related Acts, Minimum Wages

The Contractor shall be responsible to pay STATE PREVAILING WAGES per the determination contained within this document. To the extent that this provision conflicts with the provisions of the General Conditions and the Special Conditions, this provision shall prevail.

Additional Special Conditions:

1) ADDENDA

Any addenda issued during the time of bidding shall form a part of the instructions to bidders or specifications; shall be reflected in the Contractor's proposal; and shall be a part of the Contract.

2) TIME FOR COMPLETION

The work shall commence at the time stipulated in the Notice to Proceed to the contractor and shall be fully completed within 30 calendar days.

3) COLOR SELECTION

Where color selection is required, unless otherwise specified, selection shall be made by the Commission from manufacturer's standard colors and finishes, samples of which shall be submitted by the Contractor for approval. No material requiring color selection shall be delivered to the job site prior to the receipt by the contractor of approved colors, and all material shall conform to the required color(s).

4) COMMUNICATIONS

All notices, demands, requests, instructions, approvals, proposals, and claims must be in writing. Any notice to or demand upon the contractor shall be deemed sufficiently given if delivered at the office of the Contractor as stated on the signature page of the Contract (or at such other office as the Contractor may from time to time designate in writing and deliver to the SDHC, or deposit in the United States mail in a sealed, postage-prepaid envelope or deliver with charges prepaid to any telegraph office for transmission, in each case, addressed to such offices).

All papers to be delivered to the SDHC shall, unless otherwise specified in writing to the Contractor, be delivered to the SDHC, 1122 Broadway, Ste. 300, San Diego, CA 92101, and any notice to or demand upon the SDHC shall be sufficiently given if so delivered, or deposited in the United States mail in a sealed postage-paid envelope, or delivered with charges prepaid to any telegraph company for transmission to said SDHC at such address or to such other representatives of the SDHC or to such other address as the SDHC may subsequently specify in writing to the Contractor for such purpose.

Any such notice shall be deemed to have been given as of the time of actual delivery; or in the case of mailing, when the same should have been received in due course of post in the case of telegrams, as the time of actual receipt, as the case may be.

4.) CONTRACTOR'S LICENSE

The Contractor and subcontractors shall be licensed for the type of work to be performed as prescribed by the State Contractor's Licensing Board and shall maintain a valid license for the term of the agreement. It shall be the responsibility of the Contractor to determine the type of license required for the specific work performed. The Contractor and subcontractors shall have current City Business Licenses.

The Commission will make available to the Contractor, with reasonable promptness, such further detail explanations, instruction, and drawings as may be necessary for the proper execution of the work. In giving such additional instruction, the Commission shall have the authority to make minor changes in the drawings and specifications.

5.) CONSTRUCTION PROGRESS DOCUMENTATION

Contractor shall provide the following Construction Progress Documentation:

a. **Daily Construction Progress Reports:**

The General Contractor shall provide copies of the Daily Construction Progress Reports to the project's Construction Manager and the Labor Compliance Manager on a weekly basis but no later than 10:00 a.m. on the Monday following the week being reported. These reports shall be inclusive of all productions and quantities of materials delivered/installed, portions of work completed to date and general summaries of daily executed tasks.

b. **Work Force Log In/Log Out Reports:**

The General Contractor shall provide these logs to the Construction Manager and the Labor Compliance Manager on a weekly basis; but no later than 10:00 a.m. the Monday following the week being reported (General Contractor may provide the information on the Daily Construction Progress Report). This report shall be inclusive of all employees, subcontractors, material delivery personnel, architects/engineers, owner's representatives, inspectors or any other project related personnel at the site.

c. **Tailgate Safety Meeting Reports:**

The General Contractor shall provide these meeting reports to the Construction Manager on a weekly basis; but no later than 10:00 a.m. the Monday following the week being reported. The General Contractor shall conduct on-site safety meetings on a weekly basis. All personnel that will be working at the project site shall be required to be present at the time of the meeting and sign the Tailgate Safety Meeting document.

d. **Photo Documentation:**

The General Contractor shall conduct photo documentation during the course of the work and submit to the SDHC Construction Manager electronically on a weekly basis in a .jpg format.

All documents reference in Section 5 can be submitted electronically to the Construction Manager and Labor Compliance Manager accordingly.

6) **DEFECTIVE WORK AND MATERIALS**

The contractor shall promptly remove from the premises all materials condemned by the Commission as failing to conform to the Contract whether incorporated in the work or not, and where materials and/or work have been condemned by the Commission, the Contractor shall promptly replace and re-execute his/her work in accordance with the contract and without expense to the Commission and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

7) **DUST PALLIATION**

Throughout the entire contract period, the Contractor shall effectively dust-palliate the working area. Such palliation shall consist of such frequency as will satisfactorily allay the dust during all hours that work is being performed. Manufactured items installed in this project and not specifically covered in the specifications are to be installed in strict accordance with the manufacturer's current printed instructions.

8) **EMERGENCIES ARE DEFINED AS:**

- a) Emergency work after normal business hours, Housing Commission observed holidays and office closures. Normal business hours are Mon-Fri 8am – 5pm.
- b) Emergency physical work items that pose an immediate threat to life, health, safety, or property, or that are related to fire safety.

- c) Emergency status abated means that an emergency work order is either fully completed, or the emergency condition is temporarily eliminated and no longer poses an immediate threat. If the work cannot be completed, emergency status can be abated by transferring the resident away from the emergency situation.
- d) Emergency work order is a work order, from any source, that involves a circumstance that poses an immediate threat to life, health, safety or property, or that is related to fire safety.

Further, nothing contained in the Guarantee Provisions of this contract, either within the General Conditions or the Special Conditions shall limit the rights of the PHA to collect damages as set forth in this paragraph entitled Warranty of Construction.

9) **EQUIPMENT FURNISHED BY OTHERS**

- a) The following equipment will be furnished by others but installed by the Contractor:

N O N E

- b) The equipment will be delivered to the Contractor at the project site. The Contractor shall, at his expense and risk, unload and install the equipment, and do any necessary hauling to the places for installation. The Contractor shall furnish the Commission with a schedule of his need for equipment sufficiently of such need to enable the Commission to obtain delivery under the procurement contracts.
- c) Where the type of equipment requires rough-in dimensions, the Architect or Contracting Officer will furnish them to the Contractor as soon as available.
- d) When equipment arrives at the delivery point, the Contractor shall promptly unload and transfer it to the project site, unless otherwise permitted or directed. The equipment shall not be unloaded except in the presence of a representative of the Commission with whom the Contractor shall jointly determine what, if any, damage has occurred in transit, and the responsibility therefore. Turnover of the equipment to the Contractor shall then be formalized by means of transfer receipt, executed in triplicate, signed by the representatives of the Contractor and the Commission. This document shall show all particulars of the shipment it covers; the number and condition of the items turned over to the Contractor shall be fully responsible for the equipment.
- e) The Contractor shall inspect all equipment items for latent defects or concealed damage and for shortages, and immediately report all such discrepancies to the Commission so that correction or replacement can be obtained.
- f) The provision to "install" as used in this section, covers all operations and materials in connection with this equipment necessary to (1) distribute; (2) uncrate; (3) assemble as may be normally necessary; (4) place in permanent position; (5) connect up; and (6) clean up.
- g) The Contractor shall deliver all such equipment in whole and satisfactory operating condition. He shall be responsible for actions and costs applicable to final testing, adjusting, and checking for proper performance.

10) **GUARANTEE OF WORK**

- a) Except as otherwise specified, all work shall be guaranteed by the Contractor against defects resulting from the use of inferior materials, equipment, or workmanship for a period of **one (1) year** from the date of final completion of the Contract or from full occupancy of all the buildings by the Commission, whichever is earlier.

- b) If, within any guarantee period, repairs or changes are required in connection with guaranteed work, which, in the opinion of the Architect, is rendered necessary as the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the Contract, the contractor shall, promptly upon receipt of notice from the Commission, and without expense to the Commission:
- 1) Place in satisfactory condition, in every particular, all of such guaranteed work, correct all defects therein.
 - 2) Make good all damage to the buildings or sites, or equipment or contents thereof, which, in the opinion of the Commission, is the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the Contract.
 - 3) Make good any work or material, or the equipment and contents of said buildings or site disturbed in fulfilling any such guarantee.
 - 4) In any case wherein fulfilling the requirements of the Contract or of any guarantee, embraced in or required thereby, the Contractor, disturbs any work guaranteed under another Contract, he/she shall restore such disturbed work to a condition satisfactory to the Commission and guarantee such restored work to the same extent as it was guaranteed under such other Contract.
 - 5) If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the Commission may have the defects corrected and the Contractor and his/her surety shall be liable for all expenses incurred.
 - 6) All special guarantees applicable to definite parts of the work that may be stipulated in the specifications or other papers forming a part of the Contract shall be subject to the terms of this paragraph during the first year of the life of such special guarantee.

11) JOB OFFICES

- a) The Contractor must designate an area to serve the posting requirements of this contract. The board (4x8) must be in plain view in a well trafficked area at each site. On this board will be posted EEO and wage information in compliance with the General Conditions of this contract.
- b) The Contractor and his subcontractors may maintain such office and storage facilities on the site as may be necessary for the proper conduct of the work. These shall be located so as to cause no interference with any work to be performed on the site. The Architect or Contracting Officer shall be consulted with regard to locations.
- c) Upon completion of the project, or as directed by the Commission, Contracting Officer or Architect, the Contractor shall remove all such temporary structures and facilities from the site, same to become his property, and leave the premises in the condition required by the Contracting Officer.

**12) LIQUIDATED DAMAGES FOR FAILURE TO TIMELY EXECUTE AND SUBMIT
CLOSE-OUT DOCUMENTS**

- a) Upon written notification by the Commission to the Contractor must submit the below listed project close out documents:

1. State prevailing Certified Payrolls Reports and Statements of Compliance;
2. Section 3 Final Documents, if applicable
3. Contractor's Certificate and Release, appropriately notarized;
4. Release of Lien;
5. Operation, Maintenance, and Warranty (OM&W) Manual
Guarantees;
Warranties;
Assignment of Guarantees;
As Built Plans; Manufacturer's Guarantees;
Any and all documents reasonably required by the SDHC
6. Payment:
Request for Retention Release;
Request for Final Payment; and
7. Any and all forms reasonable required by the SDHC.

The Contractor shall prepare and submit the properly executed closeout forms, documents, and plans within **twenty-one (21) days** of receipt of the written request from the SDHC. Time is of the essence in submitting the documentation completely and accurately filled out.

- b) Upon the failure of the Contractor to timely submit the forms, the Contractor shall accrue liquidated damages, for each and every day that the Contractor fails to submit all of the documentation referenced above. The liquidated damages constitute a good faith estimate by the Contractor and the Commission in advance of the breach by the Contractor of the damages that the Commission is expected to experience for each and every day that the close out documents are not timely submitted. The Commission incorporates by reference the language contained within **Clause 33 of the Special Conditions and General Conditions herein**, Article 13 of the Contract and each and every other reference to Liquidated Damages contained within the Contract Documents.

- c) Section 17 of this Section titled Project Closeout Documents and Procedures outlines the list of required documents.

13) NORMAL SEASONAL RAINFALL DEFINED

Normal seasonal rainfall shall not be considered reason for time extension. Normal seasonal rainfall shall be determined from the rainfall record of the U.S. Weather Bureau, taken at the recording station nearest the site of construction, and shall be the monthly averages of the past thirty (30) years, of the number of days in which .01 inch or more of rain was recorded.

14) PRE-FINAL INSPECTION

- a) Prior to the completion of the work, the Contractor shall notify the Commission that the work is substantially complete and request that a preliminary final inspection be made with the Commission.
- b) The Contractor's request shall include a list of items which will not be finished at the time of the inspection, but which will be completed by the time of the final inspection.
- c) If, in the opinion of the Commission, sufficient work has been completed to warrant the pre-final inspection, the Commission will notify the Contractor and arrange for the date and time of the inspection.
- d) At the completion of the pre-final inspection, the Commission will present the contractor with a list of items to be finished, corrected and/or re-done before the final inspection and shall arrange with the Contractor a time and date for either another pre-final inspection or for the final inspection. Items listed on the pre-final or final inspection (punch list) must be completed within seven (7) calendar days.

15) PROGRESS MEETINGS

The General Contractor shall conduct weekly Progress Meetings at the site during the progress of work and prepare the following documents:

1. Meeting agenda, and
2. Take and distribute meeting notes to the attendees.

Attendees taking exception to anything in the meeting notes shall state their objections in writing within five (5) working days following receipt.

As part of the last weekly Progress Meetings each month, the General Contractor shall schedule and hold a billing meeting with the SDHC's Construction Manager in attendance, to agree on the percentage of work completed up to that date and establish the amount to be requested in the next Periodic Estimate for Partial Payment.

16.) PROJECT CLOSEOUT DOCUMENTS AND PROCEDURES

a. Preparation and Provision of Project Record Documents (If applicable):

All original permits, inspection cards, stamped or perforated drawings for construction (plans) and other project documentation that constitute the Project Record Documents. Contractor shall store the Project Record Documents in the field office apart from documents used for construction. Contractor shall maintain the Project Record Documents in a clean, dry, legible condition and in good order. Contractor shall not use the Project Record Documents for construction.

- i. The Contractor shall prepare, as additional Project Record Documents, as-built plan documents depicting all revisions and deviations (if applicable). Drawings shall be in AutoCAD .dwg format and Adobe .pdf formats or as otherwise approved by the SDHC. Contractor shall provide one (1) full-size hard copy print and (1) electronic copy of all as-built drawings and files. Hand-drawn or "red-line" drawings shall not be accepted without the SDHC's prior approval, which approval shall be at the SDHC's sole discretion. Drawings shall be legible, reproducible, and properly identified such they may be used as a reference for maintenance or construction.
- ii. The Contractor shall prepare, as additional Project Record Documents, the Operation, Maintenance and Warranty Binder (OM&W Binder). Contractor shall provide one (1) hard copy bound in a three-ring binder and one (1) electronic copy in Adobe .pdf format of the OM&W Binder. The OM&W Binder shall be organized by Technical Specification Section number, submitted in its original form (wet signatures) and shall contain the following items at a minimum:
 - 1. Table of Contents
 - 2. A list containing the names, business telephone numbers, emergency telephone numbers, e-mail addresses, website addresses and other contact information for the Contractor and all subcontractors and major suppliers/manufacturers associated with the project.
 - 3. The identified building system or component and the name of the Contractor or subcontractor performing work on this system.
 - 4. A detailed description of system operation, including start-up, shut-down and emergency procedures as well as any installation and safety instructions.
 - 5. Single line diagrams and control wiring diagrams.
 - 6. Drawings for construction and Shop drawings.
 - 7. Detailed product literature with technical information inclusive of use and care instructions.
 - 8. Maintenance schedule, testing instructions and performance parameters.
 - 9. Parts list including recommended spare/replacement parts.
 - 10. Manufacturer's warranties for all major components.
- iii. All Project Record Documents and Closeout Documents shall be provided to the SDHC within twenty-one (21) calendar days of receipt of written request from the SDHC following the Notice of Completion.

b. Additional Project Closeout Documents and Procedures.

- i. **Restoration of Damaged Work:**
Restore or replace damage materials and finishes caused by Contractor during the performance of this work. Such restoration shall be at no additional cost to the SDHC. Restoration shall be equal to the original work, and finishes shall match the appearance of existing adjacent work.
- ii. **Correction of Defective Work and Materials:**
Replace work due to defective workmanship or materials at no additional cost to the SDHC. Coordinate work with the SDHC and perform at such time and manner to cause minimal interruption and inconvenience to the SDHC operations.
- iii. **Contractor's Certificate and Release:**
Contractor shall complete, execute, notarize and submit an original document of this form.

iv. **Release of Lien:**

Contractor shall complete, execute, notarize and submit an original document of this form.

v. **Guarantee:**

Contractor shall guarantee the entire work against defects in materials and workmanship for one (1) year from the date of acceptance. Warranties between the Contractor and manufacturers, and the Contractor and suppliers shall not affect the guarantee between the Contractor and the SDHC. Submit the guarantee on the Guarantee Form provided in the Special Conditions, typed on the Contractor's letterhead.

vi. **Final Certified Payroll Reports:**

All final Certified Payroll Reports must be marked "final" and submitted to the Labor Compliance Department for review and approval.

vii. **Section 3 Documents, if applicable (Federally Funded Projects):**

All final Section 3 forms must be submitted to the Section 3 department for review and approval.

- c. In no event shall final payment be made to the Contractor prior to the SDHC's receipt and approval of the Project Closeout Documents.

17) PROTECTION OF ADJOINING WORK

During the installation of work, Contractor shall insure that adjoining areas are adequately protected by the installing contractor and that upon completion of all work by each trade, all surfaces and adjoining surfaces that may have been damaged are restored to a condition acceptable to the Commission.

18) REMOVAL OF PLANT AND CLEAN-UP

Upon completion of the work, the Contractor shall remove all his/her plant, tools, material, and other articles from the property. Should he/she fail to take prompt action to this end, the Commission, at its option and without waiver of such other rights as it may have, may on thirty (30) days' notice treat them as abandoned property. All rubbish, debris, and waste material shall be completely removed. The entire area, including all fixed equipment, floors, and hardware shall be cleaned to remove paint spots and accumulated dirt or dust, and shall be left broom-clean.

The cleaning shall include a thorough cleaning of all window sills and ledges, horizontal projections, floors, and other surfaces where dirt has collected. Plumbing fixtures, and all built-in equipment shall be thoroughly cleaned and polished. Glass shall be washed on both sides.

If the Contractor fails to clean up, the Commission may do so and the cost thereof shall be charged to the Contractor.

19) SCAFFOLDING

Scaffolding shall be the responsibility of each trade requiring same. Scaffolding shall be approved by the State of California Safety Orders.

20) PROJECT SITE

Location(s):

1. **1122 Broadway
San Diego, CA 92101**

Contractor is to accept site as-is, and further demolition or repair of public improvements required will be the responsibility of the successful contractor.

21) STORM WATER MANAGEMENT, DISCHARGE CONTROL, DRAINAGE REGULATIONS AND GRADING.

Contractor shall, in performing the work specified in the contract documents, the plans, the general conditions, these special conditions, the scope of work and as otherwise expressly or implicitly required by the Contract, comply with any and all applicable state, federal and/or local requirements for the proper handling of storm waters, for discharge control, for drainage and grading, including but not limited to the provisions of the San Diego Municipal Code as referenced generally in Chapter 4 of Article 3 of Division 3, Storm Water Management and Discharge Control, Chapter 14, Article 2, Division 1, Grading Regulations, Chapter 14, Article 2, Division 2, Drainage Regulations, including but not limited to the following Sections of the San Diego Municipal Code, Sections 142.0101 et. seq.; Sections 142.0201 et. seq.; Sections 43.0301 et. seq., all as amended from time to time.

In addition, the Contractor shall comply with the provisions and requirements of the City of San Diego Water Pollution Prevention Program, as referenced in Chapter 3.4, entitled Construction Contracts, which section is on file in the office of the San Diego Housing Commission. In the event that any of these provisions and requirements conflict with any others, the most stringent requirement shall apply. To the extent that federal law conflicts with the requirements of this provision and federal law is more stringent than the local requirements, the federal law shall apply. It is the intent of the San Diego Housing Commission and the Contractor, by executing the contract to do the work that all work be done in strict compliance with all state, local and federal requirements concerning storm runoff, discharge of storm runoff and proper drainage and grading procedures.

22) TELEPHONE PRE-WIRE & TEMPORARY UTILITIES DURING CONTRUCTION

Contractor will contract and pay for telephone pre-wiring, if necessary, with telecommunications service provider. Contractor will coordinate installation of this pre-wiring with telecommunications service provide. Any costs associated with temporary utilities including, but not limited, to electricity, water, or telephone, will be coordinated by, and at the expense of, the contractor.

23) TESTS AND INSPECTIONS

Arrangements for testing and inspections, as required, shall be authorized and performed under the direction of the Commission's authorized representative. The costs of all material tests that fail to meet specifications shall be deducted from the contract price. The costs of all material tests that meet specifications shall be paid for by the Commission.

24) WARRANTIES AND GUARANTEES

The Contractor warrants to the Commission that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all work will be of good quality, free from faults and defects and in conformance with the Contract documents. All work not conforming to these requirements, including substitutions not properly approved and authorized may be considered defective. If required, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

25) SITE PROTECTION

In addition to the requirements set forth in these Special Conditions and the General Conditions, Contractor shall be solely responsible for securing, maintaining, and protecting all site(s) and dwelling(s) described within this Contract for the entire duration of this Contract. The security, maintenance, and protection shall include, but, not be limited to theft, vandalism, utility shut-offs, plant and landscape irrigation, inclement weather, and sun exposure, including Normal Seasonal Rainfall and rainfall in excess of Normal Seasonal Rainfall as defined herein.

As the Contractor progresses through each phase of his or her work, he or she shall administer any and all necessary requirements to ensure complete and continuous security, maintenance, and protection for all new and existing site and building materials and elements. Contractor shall use his or her expertise in determining the most effective means and methods in achieving a secure, maintained, and protected environment at the site(s) and dwelling(s). All expenses shall be included in the Contractor's bid with no additional cost to the Commission.

Any "tagging" or other form of destructive damage shall be covered and/or repaired within 24 hours. All temporary repairs and or measures shall be aesthetically pleasing and indicative of a "well maintained" site(s) and, performed at the sole expense of the Contractor.

26) OSHA COMPLIANCE

Contractor shall comply with all state and federal laws and regulations relating to employee safety including but not limited to OSHA. Specifically, Contractor shall be aware of and comply with all requirements pertaining to mold remediation removal.

Exhibit 3

STATE PREVAILING WAGE REQUIREMENTS

Contractors are required to verify the applicable California Wage Determination in effect on, August 23, 2016 at, www.dir.ca.gov. All rates applied must be for San Diego County. The following wage determination applies:

General Prevailing Wage Determination: 2016-1 effective February 22, 2016

The General Contractor at the time of an executed contract with San Diego Housing Commission must abide by the provisions located in "General Conditions". In addition, the provisions will be in effect for all sub/tier contractors and vendors.

Items listed below will be required for all contractors at the time of award until project completion.

- Labor Compliance training and forms are due prior to start date
- Apprentices are required if an apprentice-able trade
- No special workweek schedule are allowed (ex. 4/10)
- Certified payroll form A-1-131 and/or Prism will be utilized for submission of certified payroll records

The following Labor Compliance documents are required prior to work commencing onsite. Each document must be an original and signed in "blue" ink.

- Authorized Signatory
- Authorization for Payroll Deduction (if applicable)
- List of Trades and/or Crafts
- Fringe Benefit Statement
- Public Works Contract Award Information (DAS140)
- Agreement to Train Apprentice (if applicable)
- Request for Dispatch of Apprentice
- Training Fund Contribution Form (CAC2)
- Notarized Affidavit of Compliance

The award of this public work project requires all workers employed onsite be paid not less than the specified prevailing wage rates. Each contractor, sub or tier subcontractor shall submit **1 original** and **1 copy** certified payroll report to the San Diego Housing Commission on a **weekly** basis. Each record should be complete, accurate and signed with a wet signature (preferably in blue ink).

In an effort to streamline certified payroll records, Prism software maybe utilized in the future, and additional training will be provided.

Contractor hereby certifies, by the signature affixed to this document, that Contractor will comply with all state prevailing wage requirements applicable to this Agreement and any issued project Job Order, Task Order or Purchase Order. Contractor also certifies that it will sign and provide necessary forms including, but not limited to, Labor Compliance documents and payroll records, as required by the Commission for compliance with State prevailing wage laws, as shall hereafter be submitted to the Contractor by the Commission.

CONTRACTOR:

By: SEAN DEVLIN
Title: SALES CONSULTANT
Date: 9-7-2016

PREVAILING WAGES

IF STATE PREVAILING WAGES ARE APPLICABLE TO PROJECT (CALIFORNIA LABOR CODE SECTION 1720 ET SEQ.)

A. Contractor shall comply with the prevailing wage requirements and restrictions, obligations, requirements, and penalties of Section 1770 et seq. of the Labor Code, which requires the payment of prevailing wages to appropriate work classifications in all bid specifications and subcontracts.

B. Contractor shall furnish all subcontractors/employees a copy of the Department of Industrial Relations prevailing wage rates, which Contractor will post at the job site in a visible location in accordance with Labor Code Section 1773.2

C. Contractor shall comply with the payroll record keeping and availability requirement of Section 1776 of the Labor Code.

D. Contractor shall make travel and subsistence payments and follow holiday schedule in accordance with Section 1773.2 of the Labor Code.

E. Contractor must employ registered apprentice on all public works projects in accordance with Labor Code 1777.5.

F. Contractor is prohibited from accepting or extracting kickbacks from employees' wages under Labor Code 1778.

G. Upon work completion, Contractor will be required to sign and notarize an Affidavit of Compliance with California Prevailing Law, California Labor Codes Sections 1720-1815, which will be provided by the San Diego Housing Commission.

H. If discrepancies are discovered by either an audit of certified payroll records and/or employee interviews, payment may be withheld until such actions are corrected.

I. The following requirements apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into or after April 1, 2015:

Section 1725.5 requires that Contractor and its subcontractors register and qualify with the State of California Department of Industrial Relations ("DIR") in order to bid on, be listed in a bid proposal for, or engage in the performance of any contract for a public work. In order to register with the DIR, Contractor and its subcontractors must pay an initial nonrefundable registration fee of \$300, pay an annual renewal fee each July 1 thereafter, and provide the specified information to establish eligibility. Contractor and its subcontractors must register with the DIR at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>.

Contractor or its subcontractors shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work as defined in Labor Code § 1720, unless currently registered and qualified to perform public work pursuant to Section 1725.5 of the Labor Code. It is not a violation of this section for an unregistered Contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform Public Work pursuant to Labor

Code § 1725.5 at the time the contract is awarded. A contract entered into with a Contractor or subcontractors who failed to register as required herein shall be subject to cancellation as set forth in Labor Code § 1771.1.

The project is subject to compliance monitoring and enforcement by the DIR and Commission, as set forth in Section 1771.4 of the Labor Code. On a weekly basis, the Contractor and its subcontractors shall furnish records, in a format prescribed by the Labor Commission and as specified in Labor Code § 1776, to the Commission and California Labor Commissioner for the following:

- a. Projects for which the initial contract is awarded on or after April 1, 2015. (Labor Code § 1771.4(c)(2)(B))
- b. All projects, whether new or ongoing, on or after January 1, 2016. (Labor Code § 1771.4(c)(2)(D))
- c. Any other ongoing project in which the Labor Commissioner directs the contractors or subcontractors on the project to furnish records. (Labor Code § 1771.4(c)(2)(C))
- d. Projects that were subject to a requirement to furnish records to the Compliance Monitoring Unit pursuant to Section 16461 of Title 8 of the California Code of Regulations, prior to June 20, 2014. (Labor Code § 1771.4(c)(2)(A))

Contractor shall post job site notices as prescribed by Labor Code § 1771.4(a)(2).

Contractor hereby certifies, by the signature affixed to this document, that Contractor will comply with all state prevailing wage requirements applicable to this Agreement and any issued project Job Order, Task Order or Purchase Order. Contractor also certifies that it will sign and provide necessary forms including, but not limited to, Labor Compliance documents and payroll records, as required by the Commission for compliance with State prevailing wage laws, as shall hereafter be submitted to the Contractor by the Commission.

CONTRACTOR:

By: SEAN DEVLIN
Title: SALES CONSULTANT
Date: 9-7-2016

Exhibit 4

Technical Specifications

- 1) Contractor shall obtain all necessary permitting for completing the job.
- 2) Contractor will enlist the efforts of its firm to safely evacuate existing refrigerant from the HVAC coils.
- 3) Contractor will disconnect, demo and properly remove of three existing coils (2 vertical and one horizontal).
- 4) Contractor will provide and install three new aluminum fin and copper tube coils of like size and capacity.
- 5) Overtime labor is included in the Contract Price set forth in Article 2 for work performed on Saturday and Sunday
- 6) Contractor shall provide new coils with AmeriCoat condenser coil anti-corrosion coating that is expected to dramatically increase the expected service life.
- 7) Contractor shall provide all hoisting, rigging and traffic control to remove existing and install new coils.
- 8) Contractor will refill with refrigerant and add any needed refrigerant to ensure proper refrigerant levels.
- 9) Contractor shall start, run and test units for proper operation.