



**PHASE VIII RESIDENTIAL DEVELOPMENT (LEED)
WIDOKWTADWEN DEVELOPMENT**

2126 Construction/contracting

CONTRACT A

Draft Contract Documents and Project Specifications

March, 2023

Nottawaseppi Huron Band of the Potawatomi,
a federally recognized Indian Tribal Government
Pine Creek Reservation, MI, USA

**PHASE VIII RESIDENTIAL DEVELOPMENT (LEED)
WIDOKWTADWEN DEVELOPMENT**

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CONTRACT A

Draft Contract Documents and Project Specifications

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PART I
INSTRUCTIONS TO BIDDERS

**INSTRUCTIONS TO BIDDERS FOR CONTRACTS –
PUBLIC AND INDIAN HOUSING PROGRAMS, FORM HUD-5369**

GENERAL

Each proposal shall be firmly sealed in an envelope which is clearly labeled **Nottawaseppi Huron Band of the Potawatomi, Phase VIII Residential Development (LEED) – Widokwtadwen Development** and delivered to the office designated in the Advertisement for Bids. All bids are to be made using forms of proposal furnished by the Contracting Officer and included in this volume. Only proposals which are made out upon the regular proposal forms attached hereto, will be considered. Any unauthorized riders or qualifications to the bid as submitted will be rejected as irregular.

Proposals must be legibly written in ink with all prices given in figures as required by the proposal form. In case of unit price proposals, the bidder shall fill in the unit price bid for each item and in addition thereto, make an extension based on the estimated quantities. In case of incorrect totaling of amounts or where the unit bid price and the extension do not agree, the unit bid price shall in all cases govern in arriving at the correct extension and/or total for the purpose of comparing bids.

All questions regarding the documents in this package should be directed to the Contracting Officer, Dan Green, Chief Planning Officer, NHBP Planning Department, 1485 Mno Bmadzewen Way, Fulton, MI 49052; Office: (269) 729-5151 Ext. 3660, Fax: (269) 729-5920.

MODIFICATIONS TO FORM HUD-5369

Clause 7. Service of Protest

(b) “Protests shall be served on the Contracting Officer by obtaining written and dated acknowledgement from –”, insert the following:

John Swimmer, Chief Legal Counsel
NHBP Legal Department
1485 Mno Bmadzewen Way
Fulton, MI 49052
Fax: (269) 729-5920

Clause 8. Contract Award

(e) “Unless precluded elsewhere in the solicitation [...]”, insert the following:

The PHA/IHA (‘Owner’) intends to construct eight single-family detached dwelling units under the anticipated contract. The PHA/IHA reserves the right to award the project for fewer dwelling units according to budgetary necessity.

Clause 12. Indian Preference Requirements

(a) “HUD has determined that the contract awarded under this solicitation [...]”, add the following part:

(3) The Nottawaseppi Huron Band of the Potawatomi will give preference to Indian Contractors, Subcontractors and Suppliers for the construction of the present project under the Nottawaseppi Huron Band of the Potawatomi, Indian Preference in Contracting Code (Title V, Chap. 04). The Invitation for Bids may initially be restricted to qualified certified Indian-owned enterprises. If the Contracting Officer prefers not to restrict the Invitation for Bids to qualified certified Indian-owned enterprises, or if an insufficient number of qualified certified Indian-owned firms submit responsive bids, the Contracting Officer may advertise generally for bids. Award may then be made to a qualified certified Indian-owned enterprise after first applying a preference ordering as detailed in the NHBP Indian Preference in Contracting Code, with the lowest responsive bid which complies with the Project Specifications, if that bid is within budgetary limits established for the specific project or activity and not more than 10% higher than the total bid price of the lowest responsive bid from any qualified bidder. If no qualified certified Indian-owned enterprise submits a responsive bid which complies with the Project Specifications and that is within the stated range of the total bid price of the lowest responsive bid, the award shall be made to the qualified bidder with the lowest price which complies with the Project Specifications.

Add the following Clause:

Clause 13. Job Bank Employment Plan

The PHA/IHA ('Owner') is requiring the Contractor to acknowledge and execute a 'Job Bank Employment Plan' (with monetary allowance, as detailed in the present bid documents, Part V. Proposal) and employ NHBP Tribal Members from said Job Bank. The Contractor will be required to employ up to four (4) qualified (i.e. 'skilled', 'semi-skilled') Job Bank Workers for the approximate duration of the project. The Owner/Contracting Officer will provide a list of Job Bank participants whom are eligible and qualified to be employed in the field of residential construction. Job Bank Workers shall be paid according to the US Department of Labor 'Wage Determination' as provided in the bid documents, Part VI. Supplemental Information. The Contractor will employ such individuals as part of their primary work crew and will provide fringe benefits or their cash equivalent as further detailed in the anticipated Job Bank Employment Plan.

Add the following Clause:

Clause 14. Labor Standards

All Laborers and mechanics employed under the anticipated contract, including those laborers and mechanics employed under the approved Job Bank Employment Plan or subcontract in the course of the present project, shall be paid unconditionally and not less often than once a week the full amount of wages and bona fide fringe benefits (or cash equivalents) computed according to the US Department of Labor Wage Determination (DBRA) as provided in the present bid documents, Part VI. Supplemental Information, regardless of any contractual relationship which may exist between the Contractor and such laborers and mechanics.

Add the following Clause:

Clause 15. Sales Tax

The cost of materials and equipment incorporated or to be incorporated in the completed work shall exclude Michigan sales tax or use tax; the Contractor will require that all Subcontractors and Suppliers exclude

Michigan sales tax in their bids, cost estimates and contract proposals. The PHA/IHA ('Owner') warrants and represents that PHA/IHA is exempt from Michigan sales tax and use tax with respect to certain materials, supplies and equipment to be incorporated in the completed work. The PHA/IHA Contracting Officer will issue a Tax Exemption Certificate and copy of the Letter of Authorization from the State of Michigan to the Contractor for use exclusively in procuring material and/or equipment to be incorporated in the completed work.

Instructions to Bidders for Contracts

Public and Indian Housing Programs

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1. Bid Preparation and Submission

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

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

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

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

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

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

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

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

2. Explanations and Interpretations to Prospective Bidders

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

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

3. Amendments to Invitations for Bids

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

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

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

4. Responsibility of Prospective Contractor

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

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

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

5. Late Submissions, Modifications, and Withdrawal of Bids

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

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

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

(3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and observed holidays.

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

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

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

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

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

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

6. Bid Opening

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

7. Service of Protest

(a) Definitions. As used in this provision:

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

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

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

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

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

8. Contract Award

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

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

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

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

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

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

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

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

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

10. Assurance of Completion

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

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

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

☒ (3) a 20 percent cash escrow;

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

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

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

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

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

11. Preconstruction Conference (applicable to construction contracts)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART II

DRAFT CONTRACT DOCUMENTS AND GENERAL CONDITIONS

STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR
WHERE THE BASIS OF PAYMENT IS A STIPULATED SUM

AGREEMENT made this << >> day of << >> in the year 2023.

BETWEEN the Owner:

Nottawaseppi Huron Band of the Potawatomi,
a federally recognized Indian Tribal government
1485 Mno-Bmadzewen Way
Fulton, MI 49052
(269) 729-5151

Contracting Officer:

Dan Green, NHBP CPO
Office: (616) 514-3660
dan.green@nhbp-nsn.gov

Project Manager (Admin.):

Benjamin Tenney, NHBP Housing Director
Office: (269) 704-8363
benjamin.tenney@nhbp-nsn.gov

Project Manager (Field):

Nathan Walker, NHBP Skilled Main.
Office: (269) 729-5151
nathan.walker@nhbp-nsn.gov

and the Contractor:

<< >>
<< >>
<< >>

Attn:

<< >>
<< >>
<< >>

for the following Project:

2126 Construction/contracting CONTRACT A

Phase VIII Residential Development (LEED) – Widokwtadwen Development
2548 S Drive S.
Athens, MI 49011
PID: 13-02-021-008-00

The Architect:

N/A

The Owner and Contractor agree as follows.

ARTICLE 1 THE CONTRACT DOCUMENTS

1.1 Enumeration of Contract Documents: The Contract is this executed 'Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum' and any addenda, conditions, special provisions, or other supplemental documents attached hereto, as summarized below:

Addenda, conditions, special provisions, other supplemental documents:

<< >>

Project Specifications:

<< >>

Project Drawings:

<< >>

Other:

<< >>

1.2 The Contract Documents form the Contract for Construction and represent the entire and integrated agreement between the parties to the Contract and supersedes any prior negotiations, representations, or agreements, either written or verbal. The Contract may be amended or modified only by a modification as provided in the General Conditions of the Contract Documents.

1.3 General Conditions of the Contract Documents, included as Exhibit I of this contract, are as follows:

Form HUD-5370 'General Conditions for Construction Contracts – Public Housing Programs', *modified*

ARTICLE 2 THE WORK UNDER THIS CONTRACT

2.1 The Contractor shall execute the work described in the Contract Documents, as originally specified and proposed, except as specifically indicated in the Contract Documents to be the responsibility of others.

2.2 The Contract ("Contract A") includes construction of eight (8) Leadership in Energy & Environmental Design (LEED)-certified, single family detached dwelling units complete with site preparation; foundations; structures; finishes; appliances; electrical, plumbing and HVAC installations; provision and installation of home generator system; landscaping/planting and site restoration. Additionally, the Contract will include connection of units to utility infrastructure at the site (i.e. private residential water well and septic systems, electrical and natural gas services). Note, the construction and installation of utility infrastructure at the site will be conducted by others under separate contracts ("B" – "D").

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3.1 The date of commencement of the Work shall be the date of this agreement unless a different date is stated below or in a separate Notice to Proceed issued by the Owner.

3.2 The Contractor shall achieve substantial completion of the entire work not later than Three Hundred Sixty-Five (365) days from the date of commencement, subject to adjustments of the contract time as provided in the General Conditions of the Contract Documents.

3.3 If the Contractor fails to achieve Substantial Completion as provided in this Article, liquidated damages, if any, shall be assessed as set forth in the General Conditions of the Contract Documents, Clause 33.

ARTICLE 4 CONTRACT SUM

4.1 The Owner shall pay the Contractor the contract sum in current funds for the Contractor's complete performance of the contract, as expressed below:

The contract stipulated sum shall be << >> (\$<< >>), subject to additions and deductions as provided in the General Conditions of the Contract Documents.

4.2 Alternates, if any, included in the Contract Sum:

Item	<<	>>	Price	<<	>>
------	----	----	-------	----	----

4.3 Allowances, if any, included in the Contract Sum:

Item:	<<	>>	Price	<<	>>
-------	----	----	-------	----	----

4.4 Unit Prices, if any:

Item:	<<	>>	Price	<<	>>
-------	----	----	-------	----	----

4.5 Other:

Item	<<	>>	Price	<<	>>
------	----	----	-------	----	----

ARTICLE 5 PAYMENTS

5.1 Progress Payments. The Owner shall make progress payments on account of the Contract Sum to the Contractor as provided in the General Conditions of the Contract Documents, Clause 27.

5.2 Retainage. The Owner shall retain a percentage of the amount of progress payments until completion and acceptance of all work under the contract in accordance with the General Conditions of the Contract Documents, Clause 27 (f).

5.3 The following items are not subject to retainage: Labor readiness; staging and site access; inspection fees.

5.4 Reduction or limitation of retainage, if any, will be in accordance with the General Conditions of the Contract Documents, Clause 27 (f).

5.5 Final Payment. Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor in accordance with the General Conditions of the Contract Documents Clause 27 (i).

ARTICLE 6 DISPUTE RESOLUTION

6.1. The resolution of disputes between the Owner and the Contractor under the Contract shall be initiated and conducted in accordance with the General Conditions of the Contract Documents, Clause 31 (modified).

ARTICLE 7 TERMINATION

7.1 The Contract may be terminated by the Owner in accordance with the General Conditions of the Contract Documents, Clause 34.

ARTICLE 8 INSURANCE AND BONDS

8.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in the General Conditions of the Contract Documents, Clause 36 (modified)

8.2 The Contractor shall provide bonds as set forth in Form HUD-5369 'Instructions to Bidders for Contracts – Public and Indian Housing Programs', referenced below:

Type of Insurance or Bond	<<	>>
Document No.	<<	>>
Limit of Liability	<<	>>

Type of Insurance or Bond	<<	>>
Document No.	<<	>>
Limit of Liability	<<	>>

ARTICLE 9 GOVERNING LAW; LIMITED WAIVER OF SOVEREIGN IMMUNITY

9.1 Except as provided to the contrary in this agreement, this agreement shall be governed by the substantive laws of the State of Michigan including, without limitation, Article 2 of the Uniform Commercial Code, as adopted in Michigan, applicable laws of the Nottawaseppi Huron Band of the Potawatomi, and applicable federal laws (including requirements of 2 CFR Part 200 and 25 CFR Part 85.36). The Owner, in the exercise of its authority as the government body of a federally-recognized Indian Tribe, does not consent to a waiver of its sovereign immunity from suit except for the limited purposes set forth as follows: (i) the dispute shall be brought by and limited to the Contractor and no other party or entity; (ii) the dispute shall be limited to only causes of action under the respective agreement(s) entered into and involving the Owner and Contractor and limited to (1) arbitration proceedings or (2) actions instituted and prosecuted in either the Michigan State or Federal District Court, which shall be the only courts with jurisdiction and venue for any disputes between the parties under any agreement(s); (iii) the enforcement of any agreement(s), order, judgement, or ruling resulting from such an action including, but not limited to, any execution and collection of monetary damages, and any such award or damages resulting from the dispute shall be a limited recourse obligation of the Owner, and shall be enforceable solely against the general fund assets of the Owner, and no other trust or restricted assets of the Owner, nor any affiliates, or subsidiaries of the Owner.

###

[Execution follows]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in three (3) original counterparts the day and year first written above.

(SEAL)

Contractor

Attest:

By: _____

Title

Title

(SEAL)

Nottawaseppi Huron Band of the Potawatomi,
a federally recognized Indian Tribal government

Attest:

By: _____

Title

Title

Project Reference:

2126 Construction/contracting CONTRACT A

Phase VIII Residential Development (LEED) – Widokwtadwen Development

2548 S Drive S.

Athens, MI 49011

PID: 13-02-021-008-00

GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS –
PUBLIC HOUSING PROGRAMS, FORM HUD-5370

MODIFICATIONS TO FORM HUD-5370

Clause 1. Definitions

- (a) “Architect”, replace definition with the following:

No architect has been retained by the Owner. ‘Architect’s Duties, Responsibilities, and Authority’ as set for the elsewhere in this form will be exercised by the Contracting Officer and Project Managers.

- (h) “PHA”, add the following:

IHA means the Indian Housing Authority which may also be termed the ‘PHA’ or ‘Public Housing Authority’ and is the same as ‘Owner’.

Clause 3. Architect’s Duties, Responsibilities, and Authority

- (a) “The architect for this contract [...]”, replace part with the following:

The Owner will not retain an architect for the purposes of the present Contract; no architectural or engineering services will be provided by the Owner. The duties, responsibilities, and authority of the ‘architect’, as stated in this Clause, will be exercised by the Contracting Officer and Project Managers.

Clause 7. Site Investigation and Conditions Affecting the Work

Add the following:

- (c) The Contractor, its employees and Subcontractors will acknowledge and adhere to US Fish and Wildlife Service – Michigan Ecological Services Field Office, ‘General Project Design Guidelines and General Best Management Practices’ as relates to threatened and endangered species and critical habitat at the project location.

Clause 8. Differing Site Conditions

- (a) “The Contractor shall promptly [...]”, add the following:

If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner, but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided at Clause 30. Suspension of Work.

Clause 25. Contract Period

“The Contractor shall complete all work required under this contract within [...]”, insert the following:

365 [calendar days]

Clause 27. Payments

(d) “The Contractor shall submit, [...]”, insert the following:

5 [days]

Clause 31. Disputes

Replace entire Clause with the following:

(a.) General

(1) The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case, not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Part (a.) (1).

(2) To the extent damages are covered by property insurance, the Owner and Contractor waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the general terms and conditions of the present contract. The Owner or the Contractor, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

(3) To the fullest extent permitted by law, Contractor shall hold harmless and indemnify Owner from and against all claims, actions, liabilities, damages, losses, costs and expenses (including, without limitation, injury to or death of any persons and damage to property, economic and consequential damages and attorneys’ fees) asserted by third parties against Owner to the extent caused by the negligent acts, errors or omissions by Contractor under this Agreement, any consultant or subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. However, Contractor shall not be required to indemnify Owner from the consequences of Owner’s own negligence.

(b.) Mediation

(1) Any claim, dispute or other matter in question arising out of or related to this Agreement, as Owner’s sole option may be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Contractor’s services, the Contractor may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

(2) The Owner and Contractor shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures of the CPR International Institute for Conflict Prevention and Resolution (“CPR”) in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with

the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. Any such stay shall not apply if it would prejudice the rights of either party with respect to the applicable statute of limitations, a warranty period or other similar deadline.

(3) The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon in writing. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

(4) If the parties do not resolve a dispute through mediation pursuant to this Part (b), the method of binding dispute resolution shall be the following:

(c.) Arbitration

(1) If such mediation fails to resolve the claim or controversy, then such claim or controversy shall be subject to, and settled by, binding arbitration. Such arbitration shall be conducted at the Owner's headquarters, unless the parties mutually agree otherwise. Arbitration shall be done in accordance with the CPR Rules for Expedited Arbitration Construction Disputes of the currently in effect at the time of execution of this Agreement. Such arbitration shall be conducted by an arbitrator selected by the parties who is on the panel of arbitrators provided by CPR. The arbitrator shall have all the powers available to him or her under the applicable rules, including without limitation those concerning witnesses, subpoenas, and depositions, and hearings.

(2) Demand for arbitration must be filed in writing with the other party and CPR within 15 days after the mediation concludes. The notice shall include the following items: (i) the party's position as to the Disputed Matter, (ii) the factual and legal basis for compensation of the claim; (iii) the basis for any prior documented requested extension of time and scheduled completion date, (iv) the party's estimated time for hearing, and (v) the party's choice of arbitrator.

(3) Within 10 working days after receipt of such demand and notice for binding arbitration, the responding party shall provide a written summary of its position; the basis for rejection of the other party's claim for compensation, time extension, or other relief; and either the responding party's confirmation of acceptance of the arbitrator chosen by the first party or the responding party's choice of arbitrator.

(4) If the responding party does not accept the first arbitrator chosen and suggests an alternate arbitrator, the first party shall have 10 working days to accept the responding party's choice of arbitrator, failing which the two designated arbitrators shall jointly select a third arbitrator from the CPR panel of arbitrators and that third arbitrator shall conduct the arbitration.

(5) The award rendered by the arbitrator shall be final, and judgment may be entered upon it, and enforcement or execution thereon may be sought in accordance with applicable law in any court of competent jurisdiction, including The Nottawaseppi Huron Band of Potawatomi Tribal Court ("Tribal Court"); except that enforcement of any award pursuant to a final judgment by the arbitrator against the Owner shall only be enforceable in Tribal Court. The Owner hereby grants to Contractor a limited, non-assignable waiver of Owner's sovereign immunity for the sole purpose of enforcing the arbitration award in Tribal Court pursuant to the provisions of this Agreement, and for no other purpose.

(6) No award for monetary relief shall be issued or enforceable against the Owner other than for enforcement of payment expressly due under the terms of this Agreement in consideration of Contractor's performance properly tendered, including reasonable attorney's fees and costs to be awarded to the prevailing party. In no event shall Owner or Contractor be liable for consequential, punitive, exemplary, or indirect damages, costs, or expenses in contract or in tort, other than compensatory damages for breach of this Agreement, and reasonable attorney's fees and costs.

(7) No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder, or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement signed by the Owner. Unless Owner expressly consents,

the Owner reserves its sovereign immunity against any claims by any party joined or included in a consolidated proceeding other than Contractor.

(8) Unless either party has properly terminated the Agreement or stopped work in accordance with the Agreement, the Architect shall continue to prosecute the work regardless of unresolved claims or demands by the parties.

(9) The fees and expenses of the arbitration panel shall be shared equally by the parties.

Clause 33. Liquidated Damages

(a) "If the Contractor fails to complete the work [...]", insert the following:

\$500.00 [for each day of delay]

Clause 36. Insurance

Replace entire Clause with the following:

(a.) Contractor's Liability Insurance

(1) The Contractor shall purchase from and maintain and shall cause its Subcontractors to purchase and maintain in a company or companies rated "A+" "A" or "A-" lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor and the Owner from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (i) Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- (ii) Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- (iii) Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- (iv) Claims for damages insured by usual personal injury liability coverage;
- (v) Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- (vi) Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- (vii) Claims for bodily injury or property damage arising out of completed operations; and
- (viii) Claims involving contractual liability insurance applicable to the Contractor's obligations under Section (3) below.

(2) The insurance required by this Clause shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the later of the date of final payment or the date of termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

(3) The insurance required herein shall be written for not less than the following, or greater if required by law:

- (i) Workers Compensation – State Statutory (policy to include a waiver of subrogation in favor of Owner.).
- (ii) Employer’s Liability – Bodily injury by accident \$1,000,000; bodily injury by disease-\$1,000,000.
- (iii) Commercial General Liability – Coverage equal to or greater than the CGL0001 edition 10/01 (unmodified by restrictive endorsements) including, without limitation, Premises Operations; Independent Contractors (let or sublet work); Contractual Liability; Products and Completed Operations; Explosions, Collapse and Underground; Broad Form Property Personal injury and Advertising Liability (employment exclusions deleted); Incidental Medical Malpractice; Cross-Liability and severability of interest; Minimum Coverage \$1,000,000 each occurrence; and \$2,000,000 General Aggregate.
- (iv) Commercial Automobile Coverage – \$1,000,000 Combined Single Limit; policy shall cover all contractor furnished, owned, hired and non-owned vehicles, including the loading or unloading thereof.

All of the above shall be on an occurrence policy form. The Contractor shall maintain the required insurance in force continuously from before commencing work for a period of at least twelve months after final completion.

(4) The Contractor shall not allow insurance required by this Agreement to lapse, be cancelled, reduced in limits or coverage, non-renewed, or materially changed or have restrictive modifications added during the life of this Agreement, including the guarantee period or the periods of required coverage. All insurance policies and certificates of insurance shall contain a provision that coverages afforded there under shall not be cancelled reduced in limits or coverage, or materially changed, or have restrictive modifications added, without sixty (60) days prior written notice to the Owner. Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates shall be in a form acceptable to the Owner and shall provide satisfactory evidence that the Contractor has complied with all insurance requirements. Failure of the Owner to object to a lack of certificate of insurance or to the coverages indicated thereon or provided by the Contractor shall not constitute a waiver by the Owner of any of the Contractor’s obligations. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

(5) The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (i) the Owner and any other party identified by Owner as additional insureds for claims caused in whole or in part by the Contractor’s negligent acts or omissions during the Contractor’s operations; and (ii) the Owner as an additional insured for claims caused in whole or in part by the Contractor’s acts or omissions during the Contractor’s completed operations.

(6) In the event the Contractor fails to procure or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and deduct the cost thereof from any monies due to the Contractor, or terminate this Agreement under Clause 18.

(7) Compliance by the Contractor with the foregoing Insurance requirements shall not relieve it from liability for amounts in excess of the limits of insurance.

(8) The Contractor and any of its Subcontractors, Sub-subcontractors, agents and employees shall waive any of their subrogation rights on their Workers Compensation Policy in favor of the Owner. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest.

(b.) Owner’s Liability Insurance

(1) The Owner shall be responsible for purchasing and maintaining the Owner’s usual liability insurance.

(c.) Property Insurance

(1) Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property required by this Part (c.) to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

- (i) Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for professional services and expenses required as a result of such insured loss, but such insurance will not cover any equipment, tools or machinery belonging to or in the possession of the Contractor or any Subcontractor or Sub-subcontractor. Nothing contained in the Contract Documents shall be construed to, nor is intended to, constitute any indemnification of the Contractor by the Owner for any loss, cost or damage arising out of any cause insured under this Paragraph.
- (ii) If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.
- (iii) This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit. Prior to the commencement of the Work, the Contractor shall provide written notice to the Owner of the proper insurance policy limits needed to adequately protect property stored off the site and property in transit.
- (iv) Partial occupancy or use shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

(d.) Loss of Use Insurance

(1) The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.

(2) If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

(3) If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of this Clause for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

(4) Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Clause. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a

provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

(e.) Waivers of Subrogation

(1) The Owner and Contractor waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Clause or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

(2) A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

(3) If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Clause 29. (b.).

(4) The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

Clause 40. Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968

Remove the entire Clause; the identified federal regulations do not apply to Housing Authorities operating under certified Tribal Employment Codes.

Clause 46. Labor Standards – Davis-Bacon and Related Acts

(a) "Minimum Wages (2)(iv) [...]", add the following:

The applicable wage determination, attached to the Contract Documents:

General Decision Number: MI20230012 02/03/2023 Construction Type: Residential

Add the following Clause:

Clause 49. Governing Law; Limited Waiver of Sovereign Immunity

Except as provided to the contrary in this agreement, this agreement shall be governed by the substantive laws of the State of Michigan including, without limitation, Article 2 of the Uniform Commercial Code, as adopted in Michigan, applicable laws of the Nottawaseppi Huron Band of the Potawatomi, and applicable federal laws (including requirements of 2 CFR Part 200 and 25 CFR Part 85.36). The Owner, in the exercise of its authority as the government body of a federally-recognized Indian Tribe, does not consent to a waiver of its sovereign immunity from suit except for the limited purposes set forth as follows: (i) the dispute shall be brought by and limited to the Contractor and no other party or entity; (ii) the dispute shall be limited to only causes of action under the respective agreement(s) entered into and involving the Owner and Contractor and limited to (1) arbitration proceedings or (2) actions instituted and prosecuted in either the Michigan State or Federal District Court, which shall be the only courts with jurisdiction and venue for any disputes between the parties under any agreement(s); (iii) the enforcement of any agreement(s), order, judgement, or ruling resulting from such an action including, but not limited to, any execution and collection of monetary damages, and any such award or damages resulting from the dispute shall be a limited recourse obligation of the Owner, and shall be enforceable solely against the general fund assets of the Owner, and no other trust or restricted assets of the Owner, nor any affiliates, or subsidiaries of the Owner.

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. 11/30/2023)

**Applicability. This form is applicable to any
construction/development contract greater than \$250,000.**

This form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 2 CFR 200, and those requirements set forth in Section 3 of the Housing and Urban Development Act of 1968 and its amendment by the Housing and Community Development Act of 1992, implemented by HUD at 24 CFR Part 75. The form is required for 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.

1. Definitions

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

3. Architect's Duties, Responsibilities, and Authority

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

2. Contractor's Responsibility for Work

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

4. Other Contracts

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

Construction Requirements

5. Pre-construction Conference and Notice to Proceed

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

6. Construction Progress Schedule

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

7. Site Investigation and Conditions Affecting the Work

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

reasonably ascertainable from an inspection of the site, including all exploratory work done by the PHA, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the PHA.

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

8. Differing Site Conditions

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

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 "shown" "indicated", "detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place" that is "furnished and installed".
- (d) "Shop drawings" means drawings, submitted to the PHA by the Contractor, subcontractor, or any lower tier subcontractor, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The PHA may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.
- (e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with other contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the PHA's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.
- (f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Architect approves any such variation and the Contracting Officer concurs, the Contracting Officer shall issue an appropriate modification to the contract, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.
- (g) It shall be the responsibility of the Contractor to make timely requests of the PHA for such large scale and full size drawings, color schemes, and other additional information, not already in his possession, which shall be

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

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

10. As-Built Drawings

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

11. Material and Workmanship

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

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

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

12. Permits and Codes

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

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

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

13. Health, Safety, and Accident Prevention

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

14. Temporary Heating

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

15. Availability and Use of Utility Services

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

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

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

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

17. Temporary Buildings and Transportation of Materials

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

18. Clean Air and Water

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

19. Energy Efficiency

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

20. Inspection and Acceptance of Construction

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

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

21. Use and Possession Prior to Completion

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

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

22. Warranty of Title

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

23. Warranty of Construction

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

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

24. Prohibition Against Liens

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

Administrative Requirements

25. Contract Period

The Contractor shall complete all work required on this contract within _____ calendar days of the effective date of the contract, or within the time schedule established in the notice to proceed issued by the Contracting Officer.

26. Order of Provisions

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

27. Payments

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

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

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

Name:

Title:

Date:

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

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

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

28. Contract Modifications

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

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

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

29. Changes

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

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

30. Suspension of Work

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

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

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

31. Disputes

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

32. Default

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

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

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

33. Liquidated Damages

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

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

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

34. Termination for Convenience

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

35. Assignment of Contract

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

36. Insurance

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

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

- (3) Automobile Liability on owned and non-owned motor vehicles used on the site(s) or in connection therewith for a combined single limit for bodily injury and property damage of not less than \$ _____ [Contracting Officer insert amount] per occurrence.

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

37. Subcontracts

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

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

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

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

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

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

39. Equal Employment Opportunity

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

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or handicap.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, or handicap. Such action shall include, but not be limited to, (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship.

- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or handicap.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or Federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.
- (j) Compliance with the requirements of this clause shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act and the Indian Preference clause of this contract.

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

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

41. Interest of Members of Congress

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

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

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

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

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

44. Royalties and Patents

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

45. Examination and Retention of Contractor's Records

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

46. Labor Standards - Davis-Bacon and Related Acts

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

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

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

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

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

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

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

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

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

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

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

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

47. Non-Federal Prevailing Wage Rates

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

48. Procurement of Recovered Materials.

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

PART III
DRAWINGS

SCHEDULE OF DRAWINGS

View and download at no cost at the Nottawaseppi Huron Band of the Potawatomi website: <https://nhbp-nsn.gov/phase-viii-residential-development/>

1. Wightman and Associates, Preliminary Site Plan, '2021 Housing Phase VIII – Athens, MI'
2. Rivertown Homes by Design, '2010 NHBP Plans A (2-Bed)'
3. Rivertown Homes by Design, '2010 NHBP Plans B (3-Bed)'

PART IV

PROJECT SPECIFICATIONS

**PHASE VIII RESIDENTIAL DEVELOPMENT (LEED)
WIDOKWTADWEN DEVELOPMENT**

2126 Construction/contracting

CONTRACT A

Project Specifications

INDEX

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SECTION 01 10 00

SUMMARY

PART 1 - GENERAL

1.1 WORK COVERED BY CONTRACT DOCUMENTS

- A. Project Summary: The Contract ("A") includes construction of eight (8) Leadership in Energy & Environmental Design (LEED)-certified single-family detached dwelling units complete with site preparation; foundations; structures; finishes; appliances; electrical, plumbing and HVAC installations; provision and installation of home generator system; landscaping/planting and site restoration. Additionally, the Contract will include connection of units to utility infrastructure at the site (i.e. private residential water well and septic systems, electrical and natural gas services). The Contractor shall achieve substantial completion of the entire work not later than Three Hundred Sixty-Five (365) days from the date of commencement, subject to adjustments of the contract time as provided in the General Conditions of the Contract Documents. The construction and installation of utility infrastructure at the site will be conducted by others under separate contracts ("B" – "D").

- B. Project Location:

Phase VIII Residential Development (LEED) – Widokwtadwen Development
2548 S Drive S.
Athens, MI 49011
PID: 13-02-021-008-00

- C. Owner, Contracting Officer and Project Manager Identification:

OWNER

Nottawaseppi Huron Band of the Potawatomi,
a federally recognized Indian Tribal government
1485 Mno Bmadzewen Way
Fulton, MI 49052
Office: (269) 729-5151

CONTRACTING OFFICER

Dan Green, Chief Planning Officer
NHBP Planning Department
1485 Mno Bmadzewen Way
Fulton, MI 49052

PROJECT MANAGER (Admin.)

Benjamin Tenney, Housing Director
NHBP Housing Department
1485 Mno Bmadzewen Way
Fulton, MI 49052

PROJECT MANAGER (Field)

Nathan Walker, Skilled Main.
NHBP Housing Department
1485 Mno Bmadzewen Way
Fulton, MI 49052

- D. Contract Documents: The project is being funded by the US Department of Housing & Urban Development under the authorization of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) and will possess unique contract requirements. The Project will be expedited under one general construction contract for the above summarized work at a stipulated sum; i.e. ‘Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum’, Terms and Conditions: Form HUD-5370, ‘General Conditions for Construction Contracts – Public Housing Programs’, *modified*.
- E. Drawings: Wightman and Associates, Preliminary Site Plan, ‘2021 Housing Phase VIII – Athens, MI’; Rivertown Homes by Design, ‘2010 NHBP Plans A (2-Bed)’ and ‘2010 NHBP Plans B (3-Bed)’; view and download at <https://nhbp-nsn.gov/phase-viii-residential-development/>
 - 1. **‘2021 Housing Phase VIII – Athens, MI’ represents preliminary lots and site plan (area highlighted) for general reference of site location and proximity of units, the drawing is not intended for construction.**
 - 2. **The Owner intends to construct four units using ‘2010 NHBP Plans A (2-Bed)’ and four units using ‘2010 NHBP Plans B (3-Bed)’.**

1.2 PERMITS AND FEES

- A. The Contractor will be responsible for all permit and inspection fees due to the local Authority Having Jurisdiction (Athens Township).
 - 1. All site work and other construction shall be performed in conformance with the Michigan Soil Erosion and Sedimentation Control Act.
 - 2. Building, mechanical, plumbing, and electrical permits will be issued by Athens Township (130 E. Burr Oak St., Athens, MI 49011; (269) 729-5305).
 - 3. Connection of units to private residential water wells will be conducted in adherence to permits issued by the Calhoun County Public Health Department – Environmental Public Health Division [acquired by Owner in association with work under a separate contract].
 - 4. Connection of units to private septic systems will be conducted in adherence to permits issued by the Calhoun County Public Health Department – Environmental Public Health Division [acquired by Owner in association with work under a separate contract].

1.3 USE OF PREMISES

- A. General: The Contractor will have reasonable use of property for construction operations, including use of project site, during the period of construction. Fence rows and drain corridor(s) are to be left undisturbed except at crossing. The Owner will have input into excess soil and other natural material placement. Some may be kept on site.

1.4 PROGRAMMATIC REQUIREMENTS

- A. Site work, building, plumbing, mechanical, fuel gas, and electrical systems/applications shall adhere to the following codes and standards:
 - 1. Michigan Residential Code, being the most recent edition as adopted by the State of Michigan.

2. Michigan Energy Code, being the most recent edition as adopted by the State of Michigan.
 3. ENERGY STAR Certified Homes, National Program Requirements (3.1 Rev. 12)
 4. ENERGY STAR Single-Family New Homes, National Water Management System Builder Requirements (3/3.1/3.2 Rev. 12)
 5. USGBC Leadership in Energy & Environmental Design (LEED) BD+C Homes v4
- B. In addition to features and components provided in the Drawings, units will include the following basic items and features; note, specific components and applications required to achieve desired Leadership in Energy & Environmental Design (LEED) certification to be proposed by the Contractor are not considered here. Modifications to the plans may be required by the Owner/Contracting Officer to conform to existing standards and the established style of homes at Owner's other local properties.
1. Rear deck/patio, 144 square feet minimum (if individual 'garden view' lots require raised decks, include stairs to lower elevation yard).
 2. 5" thick concrete drive at each unit, 6" minimum 21AA base compacted in 2" lifts, wire mesh reinforcement.
 3. Water softener with iron filtration, discharge to sump crock.
 4. Radon gas venting (preparation to install mitigation systems).
 5. Home generator system.
 6. Appliances required include refrigerator, range, dishwasher, washer, and dryer.
 7. 200 amp electrical service at each unit.
 8. Closet lighting.
 9. Coach lights at garage and front elevation, photocell-controlled flood lamps to cover each remaining elevation.
 10. Three cable outlets (i.e. two at living area, one at master bedroom)
- C. Style: The building unit will be similar in style to the existing homes at Owner's other local properties. In addition to certain features and components included in the Drawings, the following measures shall be considered necessary criteria for achieving conformity:
1. Front elevation 25% cultured stone.
 2. 4" lineal trim at windows.
 3. Shutters at front windows unless surrounded by cultured stone.
 4. Gutters (screen protection) and downspouts at all eaves, buried drains (4" underground corrugated pipe with pop-up discharge) $\geq 50'$ from rear of home.
 5. Sump Pumps (foundation drainage, water softener discharge) with backflow preventer, discharge to downspout drains.
- D. See Section 01 61 00 Product Requirements for product type and manufacturer requirements.
- E. See Section 01 18 00 Facility Performance Requirements for Leadership in Energy & Environmental Design (LEED) requirements.
- F. The building lot will include landscaping. The following types/quantities are *minimum* requirements and are provided for bidding purposes:
1. Provide the following:
 - a. Six 2" caliper trees. Two must be a Sugar Maple.
 - b. 15 five-gallon shrubs. Five must be Eastern White Cedar.
 - c. 1,000 square feet of native ground cover plants.

- d. 5,000 square feet of native grasses.
 - e. No more than 60% of the lot to be covered by approved turf.
- 2. Landscape plans will mimic the natural growth of the local biome. Mulched beds packed tightly against the house are not desired. All landscape plans are subject to review and modification by the Owner/Contracting Officer in consultation with the NHBP Environmental Department.
- 3. All species must be native to Michigan and are subject to approval by the Owner/Contracting Officer in consultation with the NHBP Environmental Department.

G. See Section 32 90 00 Planting for product types and installation requirements.

1.5 WORK PROVIDED BY OTHERS

A. See Section 33 00 00 Utilities for additional information.

PART 2 - PRODUCTS – NOT APPLICABLE TO THIS SECTION.

PART 3 - EXECUTION – NOT APPLICABLE TO THIS SECTION.

END OF SECTION 01 10 00

SECTION 01 30 00

ADMINISTRATIVE REQUIREMENTS

PART 1 - GENERAL

1.1 SUMMARY

- A. See Section 01 10 00 Summary regarding designated Contracting Officer and Project Manager.
- B. In collaboration with the Contracting Officer/Project Manager, the Contractor will provide administrative services appropriate to the coordination and completion of work.

1.2 PRE-AWARD SUBMITTALS

- A. Upon receipt of the Letter of Intent to Award, the Contractor will prepare the following documents and submit them to the Contracting Officer pursuant to the issuance of complete Contract Documents:
 - 1. Copy of State of Michigan Licensure (SOM LARA).
 - 2. Certificate of Insurance (see, Contract Terms and Conditions, Form HUD-5370 'General Conditions for Construction Contracts – Public Housing Programs, Modifications to Form HUD-5370', Clause 36 – Insurance).
 - 3. Performance Bond – Standard or Provided by the Contracting Officer.
 - 4. Labor and Material Bond – Standard or Provided by the Contracting Officer.
 - 5. Preliminary schedule of values.
 - 6. List of intended subcontractors.
 - 7. Preliminary project schedule.

1.3 PRELIMINARY REVIEW MEETINGS

- A. LEED Design Charrette: The Project Team will conduct a design charrette conforming to Leadership in Energy & Environmental Design, 'Integrative Process' requirements; a LEED Provider/Green Rater should be identified by the Project Team prior to scheduling the design charrette.

1.4 PRECONSTRUCTION MEETING

- A. The Contractor will schedule a Preconstruction Meeting including the Project Team and interested subcontractors prior to beginning work at the project site. The Contractor will provide the following information at the meeting:
 - 1. Name/contact information for the Contractor's project Superintendent, Foreman, and/or Project Manager and emergency contact information.
 - 2. Updated list of subcontractors (as applicable).
 - 3. Updated project schedule (as applicable).

1.5 COMPLETION MEETING

- A. Upon completion of all construction and facility items and clear final inspection, the Contractor will schedule a Completion Meeting to review all required submittals. The Contractor will provide the following information at the meeting:
 - 1. Record Drawings showing 'as built' construction and design modifications.
 - 2. Written Specifications and Operation & Maintenance manuals for all installed products.
 - 3. Warranties for all covered products.
 - 4. Available permit reporting and 'Certificate of Occupancy'
 - 5. Final Request for Payment.
- B. Not later than 30 days following receipt of intermediate payments, the Contractor will deliver to the Owner/Contracting Officer 'Partial' or 'Full' Unconditional Waivers of Lien for the Contractor and all subcontractors involved in the course of work to the date of application (waiver amounts determined by current Schedule of Values submitted with each payment application).
- C. Not later than 30 days following receipt of final payment, the Contractor will deliver to the Owner/Contracting Officer 'Full' Unconditional Waivers of Lien for the Contractor and all subcontractors involved in the course of work to date of project completion.

PART 2 - PRODUCTS – NOT APPLICABLE TO THIS SECTION

PART 3 - EXECUTION – NOT APPLICABLE TO THIS SECTION

END OF SECTION 01 30 00

SECTION 01 33 00
SUBMITTAL PROCEDURES

PART 1 - GENERAL

1.1 SUMMARY

- A. The Contractor will provide types of submittals listed in individual sections and number of copies required below. One copy will be returned to the Contractor stamped in approval or rejection by the Contracting Officer/Project Manager (as applicable).
 - 1. Product data – Two copies.
 - 2. Color and finish samples – One complete set for each product.
 - 3. Inspection and test reports – Two copies.
 - 4. Warranties – Two copies.
 - 5. Closeout submittals – Two copies.
- B. See Section 01 61 00 Product Requirements for product types and manufacturer requirements; the Contractor will provide submittals for all products listed in Section 01 61 00.
- C. See Section 01 81 00 Facility Performance Requirements for required Leadership in Energy & Environmental Design (LEED) submittals; the Contractor will provide submittals for all products required under Section 01 81 00 and not already specified at Section 01 61 00.
- D. See Section 32 90 00 Planting for product types and installation requirements; the Contractor will provide submittals for all products listed in Section 32 90 00.
- E. The Contractor will comply with submittal procedures established by the Contracting Officer and acknowledge the Contracting Officer/Project Manager's submittal and shop drawing approval and rejection stamps. The Contractor will provide re-submittals if original submittals are not approved and will distribute approved copies including modifications after submittals have been approved (as applicable).
- F. The Contractor will collect and submit samples and shop drawings as specifically prepared for this project. Shop drawings shall include dimensions and details, including adjacent construction and related work. The Contractor will note special conditions and/or coordination of work required, as well as deviations from requirements of the established Contract Documents.
- G. The Contractor will provide warranties as specified; warranties shall not limit length of time for remedy of damages the Owner may have per legal statute. The Contractor, Supplier or Installer responsible for performance of warranty shall sign warranties.

PART 2 - PRODUCTS – NOT APPLICABLE TO THIS SECTION

PART 3 - EXECUTION – NOT APPLICABLE TO THIS SECTION

END OF SECTION 01 33 00

SECTION 01 61 00

PRODUCT REQUIREMENTS

PART 1 - GENERAL

1.1 SUMMARY

- A. The Contractor will provide products from one manufacturer for each home component and provide secondary materials acceptable to manufacturers of primary materials.
- B. The Contractor will provide products selected or approved by the Owner. Products submitted for substitution shall be submitted with complete documentation and include material and construction costs of substitution, including related work.
- C. The Contractor must issue requests for substitution in writing. Conditions for substitution include:
 - 1. Specified products or materials cannot be coordinated with other work or is otherwise problematic.
 - 2. Specified products or materials are not acceptable to the Authority Having Jurisdiction.
 - 3. Substantial advantage is offered to the Owner in terms of cost, time, or other valuable consideration.

PART 2 - PRODUCTS

2.1 PRODUCT STANDARDS

- A. The Contractor will provide product submittals for the following items. Note, the manufacturer/brand name used in existing development units is given here for the purpose of establishing a basic quality or aesthetic standard. **If followed by an asterisk (*), product type, manufacturer, and model are required at the Owner's discretion or to achieve ENERGY STAR and LEED certification.** If not followed by an asterisk, products by other manufacturers may be used provided the Contractor is able to substantiate their equivalence to the given product. The absence of a particular product, equipment, or installation below does not relieve the Contractor of the responsibility of providing product submittals for such items; all major design and product components should be reviewed and affirmed by the Project Team.
 - 1. Shingles: Owens Corning, ENERGY STAR Rated Shingles, Architectural *
 - 2. Horizontal Siding: Vinyl, 0.04" thick, double 4"
 - 3. Cultured Stone: Owens Corning, Country Ledgerstone
 - 4. Windows: Jeld-Wen, Premium Vinyl V-4500 (White, double hung) *
 - 5. Overhead Door: Haas Door, Insulated Steel 600 Series (White, raised panel)
 - 6. Overhead Door Opener: LiftMaster 8165W ½ HP
 - 7. Exterior Doors: Therma-Tru Benchmark Steel (White, half-lite raised panel primary entry; White, solid raised panel garage entry, barrier-free threshold) *
 - 8. Sliding Patio Doors: Ply-Gem 1500 2 Panel (White, full-lite, barrier-free threshold) *
 - 9. Interior Doors: 2 panel, wood, hollow core
 - 10. Locksets: Schlage F Series locksets with "Flair" lever handles

11. Water Closet: American Standard, VorMax Two-Piece ADA elongated (1.00 GPF) *
12. Lavatory Faucet: Delta B2515LF-PPU-ECO Stainless (1.2 GPM) *
13. Shower/Tub: Aker GB60 AcrylX (white)
14. Shower Head and Valve: Delta 75569C Stainless (1.75 GPM); Delta 52658-PK Stainless (WaterSense) *
15. Kitchen Faucet: Delta 10901LF Stainless (1.8 GPM) *
16. Cabinets: Merrilat Classic Collection, Maple
17. Counter Tops: Postformed high-pressure laminate on exterior grade plywood substrate with 4" back and side splashes.
18. Resilient Floor Coverings: Southwind Hard Surface, Harbor Plank (WPC) *
19. Carpet: Mathews & Parlo SP42, Color 3
20. Carpet Pad: ER Carpenter, Glacier Spill Guard
21. Refrigerator: GE FRSS2623AW, White *
22. Range: GE JGBS66DEKWW, White, natural gas *
23. Microwave/Range Vent: GE JVM3160DFWW, White (300 CFM), vent to exterior *
24. Dishwasher: GE GDT630PGRWW, White *
25. Clothes Washer: Speed Queen LWN6ZR 116T, White (IWF 8.4) *
26. Clothes Dryer: Speed Queen ADG6H 117T, White *
27. Bath Vent/Light: Broan 678, White (50 CFM 2.5 Sone)
28. Interior Paint: Wall – Sherwin Williams SW7517; Trim/Accent – Sherwin Williams SW9541; Ceiling – Sherwin Williams SW7007 *
29. Interior Lights: A19 Medium Base LED
30. Exterior Lights: A19 Medium Base LED
31. Ceiling Fans: Hunter, A19 Medium Base LED
32. Smoke Detectors: First Alert 9120LBL *
33. Smoke/CO: First Alert SC9120B-6 *
34. Home Generator System: GENERAC Guardian Series w/ Wi-Fi 14kW (natural gas) and GENERAC RTS Series Exterior Utility Service Disconnect. *
35. Furnace: American Standard Gold Series 95% S9V2 *
36. Air Conditioner: American Standard Gold Series 16 SEER 410A *
37. Energy Recovery Ventilator: Aprilaire 8100 *
38. Water Heater: Navion NPE-A2 *
39. Thermostat: Honeywell T6 Pro

PART 3 - EXECUTION – NOT APPLICABLE TO THIS SECTION

END OF SECTION 01 61 00

SECTION 01 81 00

FACILITY PERFORMANCE REQUIREMENTS

PART 1 - GENERAL

1.1 SUMMARY

- A. The finished building product shall adhere to the minimum performance standards listed in this section.

1.2 LEADERSHIP IN ENERGY & ENVIRONMENTAL DESIGN (LEED) CERTIFICATION

- A. **Target Certification Level: GOLD**
- B. Project Checklist: Updated Leadership in Energy & Environmental Design (LEED) credits are detailed in the 'LEED Reference Guide for Homes: Design and Construction v4' (USGBC, 2013) and the 'LEED v4 for Building Design and Construction: Homes and Multifamily Lowrise Project Checklist' (attached to this section). Optional credits may be pursued at the Contractor's advisement in consultation with the Project Team, though enough credits must be realized to meet the minimum threshold established at Target Certification Level above.
- C. See Section 01 30 00 Administrative Requirements for required meetings to review Leadership in Energy & Environmental Design (LEED) credits and responsibilities.

1.3 OTHER PERFORMANCE STANDARDS

- A. Dwelling units must conform to the Michigan Residential Code.
- B. Dwelling units must conform to the Michigan Energy Code.
- C. Dwelling units must conform to ENERGY STAR Certified Homes, National Program Requirements (3.1 Rev. 12) and ENERGY STAR Single-Family New Homes, National Water Management System Builder Requirements (3/3.1/3.2 Rev. 12). These standards should be coordinated and applied with any related performance or prescriptive requirements in current LEED programming).

1.4 SUBMITTALS

- A. Leadership in Energy & Environmental Design (LEED) certification documentation and submittals will be prepared and submitted as follows:
 - 1. The Contractor will submit all documentation required to verify the Leadership in Energy & Environmental Design (LEED) certification of the dwelling unit. These documents include signed accountability forms, calculations, material lists, etc. Refer to the 'LEED Reference Guide for Homes: Design and Construction v4' (USGBC, 2013) for specific requirements regarding submittals.

2. The Contractor will submit required copies of each document to the designated LEED Provider/Green Rater; an additional copy will be provided to the Contracting Officer.
3. The Contracting Officer will provide the following information to assist in the certification process.
 - a. Location and Transportation, 'Site Selection'

PART 2 - PRODUCTS – NOT APPLICABLE TO THIS SECTION.

PART 3 - EXECUTION – NOT APPLICABLE TO THIS SECTION.

END OF SECTION 01 81 00



LEED v4 for Building Design and Construction: Homes and Multifamily Lowrise

Project Checklist

Project Name:

NHBP Widokwtadwen Development (Phase VIII)

Date:

2023

Y ? N
2 0 0

Credit Integrative Process

2

4	0	0	Location and Transportation	15
Y			Prereq Floodplain Avoidance	Required

PERFORMANCE PATH

			Credit LEED for Neighborhood Development Location	15
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PRESCRIPTIVE PATH

4			Credit Site Selection	8
		N	Credit Compact Development	3
		N	Credit Community Resources	2
		N	Credit Access to Transit	2

6	0	0	Sustainable Sites	7
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Y			Prereq Construction Activity Pollution Prevention	Required
Y			Prereq No Invasive Plants	Required
1			Credit Heat Island Reduction	2
3			Credit Rainwater Management	3
2			Credit Non-Toxic Pest Control	2

6	0	0	Water Efficiency	12
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			Prereq Water Metering	Required
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PERFORMANCE PATH

6			Credit Total Water Use	12
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PRESCRIPTIVE PATH

			Credit Indoor Water Use	6
			Credit Outdoor Water Use	4

33	0	0	Energy and Atmosphere	38
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Y			Prereq Minimum Energy Performance	Required
Y			Prereq Energy Metering	Required
Y			Prereq Education of the Homeowner, Tenant or Building Manager	Required

PERFORMANCE PATH

29			Credit Annual Energy Use	29
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BOTH PATHS

4			Credit Efficient Hot Water Distribution System	5
		N	Credit Advanced Utility Tracking	2
		N	Credit Active Solar Ready Design	1
		N	Credit HVAC Start-Up Credentialing	1

PRESCRIPTIVE PATH

			Prereq Home Size	Required
			Credit Building Orientation for Passive Solar	3
			Credit Air Infiltration	2
			Credit Envelope Insulation	2
			Credit Windows	3
			Credit Space Heating & Cooling Equipment	4

EA PRESCRIPTIVE PATH (continued)

			Credit Heating & Cooling Distribution Systems	3
			Credit Efficient Domestic Hot Water Equipment	3
			Credit Lighting	2
			Credit High Efficiency Appliances	2
			Credit Renewable Energy	4

6	0	0	Materials and Resources	10
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Y			Prereq Certified Tropical Wood	Required
Y			Prereq Durability Management	Required
1			Credit Durability Management Verification	1
2			Credit Environmentally Preferable Products	4
1			Credit Construction Waste Management	3
2			Credit Material Efficient Framing	2

8	3	0	Indoor Environmental Quality	16
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Y			Prereq Ventilation	Required
Y			Prereq Combustion Venting	Required
Y			Prereq Garage Pollutant Protection	Required
Y			Prereq Radon-Resistant Construction	Required
Y			Prereq Air Filtering	Required
Y			Prereq Environmental Tobacco Smoke	Required
Y			Prereq Compartmentalization	Required
3			Credit Enhanced Ventilation	3
1			Credit Contaminant Control	2
1			Credit Balancing of Heating and Cooling Distribution Systems	3
		N	Credit Enhanced Compartmentalization	1
2			Credit Enhanced Combustion Venting	2
1			Credit Enhanced Garage Pollutant Protection	2
	3		Credit Low Emitting Products	3

0	0	0	Innovation	6
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			Prereq Preliminary Rating	Required
			Credit Innovation	5
			Credit LEED AP Homes	1

4	0	0	Regional Priority	4
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1			Credit Regional Priority: Rainwater Management (min. 2 of 3 pts.)	1
1			Credit Regional Priority: Annual Energy Use (min. 15 of 29 pts.)	1
1			Credit Regional Priority: Site Selection (min. 3 of 8 pts.)	1
1			Credit Regional Priority: Total Water Use (min. 5 of 12 pts.)	1

69	3	0	TOTALS	Possible Points: 110
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Certified: 40 to 49 points, Silver: 50 to 59 points, Gold: 60 to 79 points, Platinum: 80 to 110

SECTION 32 90 00

PLANTING

PART 1 - GENERAL

1.1 SUMMARY

- A. The Contractor will provide the following landscape work:
 - 1. Trees, shrubs, plants, and ground cover.
 - 2. Finish grading and lawns.
 - 3. Topsoil and soil amendments.
 - 4. Initial maintenance of landscape materials.
 - 5. Pruning and relocation of existing plant materials.
 - 6. Reconditioning existing lawns (as applicable).
- B. The Contractor will provide the following site restoration work:
 - 1. All areas disturbed during the course of the work will be restored to their original condition or as further indicated in this section.

1.2 SUBMITTALS

- A. Maintenance Data: The Contractor will submit to Owner/Contracting Officer maintenance data, including maintenance schedules.
- B. Notices: The Contractor will submit to Owner/Contracting Officer 48-hour written notice prior to turnover to the Owner for watering and maintenance.
- C. Warranty: The Contractor will warrant trees and shrubs for a period of one year after date of Substantial Completion against defects, including death and unsatisfactory growth, excepting defects resulting from neglect by the Owner, abuse by others, or natural phenomena. The Contractor will replace unsatisfactory plant material at end of warranty period at no additional expense to the Owner.

PART 2 - PRODUCTS

2.1 MATERIALS

- A. Plant Materials: All plantings shall be native to Michigan, drought resistant, and low maintenance. Acceptable species are listed below. Additional species may be considered if approval is granted by the Owner/Contracting Officer in consultation with the NHBP Environmental Department.
 - 1. Balled and Burlapped Plants and Trees: Graded to American Standard for Nursery Stock, ANSI Z60.1.
 - 2. Trees
 - a. Red Maple, *Acer rubrum*

- b. Jack Pine, *Pinus banksiana*
 - c. Silky Dogwood, *Cornus amomum*
 - d. Northern White Cedar, *Thuja occidentalis*
- 3. Shrubs
 - a. Elderberry, *Sambucus pubens*
 - b. Boxwood, *Buxu microphylla*
 - c. Viburnum, *Viburnum L.*
 - d. Creeping Juniper, *Juniper horizontalis*
- 4. Plants
 - a. Purple Coneflower, *Echinacea purpurea L.*
 - b. Happy Returns Daylily, *Hemerocallis*
 - c. Orange Daylily, *Hemerocallis fulva*
 - d. Yellow Daylily, *Hemerocallis lilioasphodelis*
- 5. Grasses
 - a. Big Bluestem, *Adropogon gerardii*
 - b. Little Bluestem, *Schizachyrium scoparium*
 - c. Junegrass, *Koeleria macrantha*
 - d. Side Oats, *Bouteloua curtipendula*
- B. Lawns: New crop seed mixture, low maintenance, slow growing, no mow fescue, mix with shade tolerant and full sun varieties.
- C. Topsoil: 4" graded from site stockpile with additional fertile, friable topsoil from local source.
- D. Landscape Materials:
 - 1. Anti-Erosion Mulch: Seed-free salt hay or threshed straw.
 - 2. Edging: Vinyl, 6-inch-tall, with 6-inch spikes driven 45 degrees every 36 inches, black.

PART 3 - EXECUTION

3.1 INSTALLATION

- A. The Contractor will install materials in accordance with approved submittals; landscape work will be installed in proper relation to adjacent construction and with uniform appearance. The Contractor will coordinate planting/landscaping with additional site restoration (as applicable).
- B. The Contractor will provide maintenance and watering until project completion and physical turnover of site to the Owner.
- C. The Contractor will replace damaged materials and dead or unhealthy plants prior to physical turnover of site to the Owner.

END OF SECTION 32 90 00

SECTION 33 00 00

UTILITIES

PART 1 - GENERAL

1.1 SUMMARY

- A. The Contractor will coordinate final connections of all utilities to new structure.
- B. Electrical Service: The local electrical utility vendor (i.e. Consumers Energy, Lansing, MI) will provide service through the Mo'ek Way right-of-way under separate contract ("Contract B"). The Contractor will expedite connection to right-of-way service via buried cable and installation of service meter at new structures. **Length will vary according to street side of residential lots, not to exceed 150 linear feet.**
- C. Heating Fuel: The local natural gas utility vendor (i.e. Consumers Energy, Lansing, MI) will provide service through the Mo'ek Way right-of-way under separate contract ("Contract B"). The Contractor will expedite connection to right-of-way service via underground fuel gas piping system and installation of service meter at new structures. **Length will vary according to street side of residential lots, not to exceed 150 linear feet.**
- D. Domestic Water: The Owner will install private residential water well service at each unit lot under separate contract ("Contract C"). The Contractor may be involved in the coordination of such work and expedite connection to the service; no metering of water service is necessary.
- E. Sanitary Sewer: The Owner will install private septic sewerage system at each unit lot under separate contract ("Contract D"). The Contractor may be involved in the coordination of such work and expedite connection to the system; no metering of sewerage service is necessary.

PART 2 - PRODUCTS – NOT APPLICABLE TO THIS SECTION.

PART 3 - EXECUTION – NOT APPLICABLE TO THIS SECTION.

END OF SECTION 33 00 00

PART V
PROPOSAL

PROPOSAL FORMS CHECKLIST

In order for the bidder's proposal to be considered complete and responsive, the following documents must be included in the sealed envelope containing the bid.

- _____ Proposal Cover [P-2]
- _____ Proposal Itemization [P-3]
- _____ Bid Bond [P-4]
- _____ Non-Collusion Affidavit [P-5]
- _____ Representations, Certifications and Other Statements of Bidders –
Public and Indian Housing Programs, Form HUD-5369-A
- _____ Previous Participation Certification, Form HUD-2530
- _____ NHBP Job Bank Employment Plan

PROPOSAL COVER

To the Owner: Nottawaseppi Huron Band of the Potawatomi
1485 Mno Bmadzewen Way
Fulton, MI 49052

The undersigned, having familiarized himself with the local conditions affecting the cost of the work, and with the Advertisement for Bids, Instructions to Bidders, draft Contract Documents and General Conditions, Project Specifications, Proposal Forms, and Addenda and Exhibits issued and attached to the specifications on file in the office of the Contracting Officer, hereby propose to perform everything required to be performed and to provide and furnish all of the labor, materials, necessary tools, expendable equipment, and all utility and transportation services necessary to perform and complete in a workmanlike manner all work required for the construction and completion of this project for the Owner, all in accordance with the above, including Addenda Nos. _____, issued thereto, for the prices, to wit:

Contractor: _____

Contact: _____

Official Address: _____

Phone: _____

Fax: _____

Email: _____

NOTTAWASEPPI HURON BAND OF THE POTAWATOMI
PHASE VIII RESIDENTIAL DEVELOPMENT – WIDOKWTADWEN DEVELOPMENT

<i>ITEM</i>	<i>EST.</i>	<i>UNIT</i>	<i>DESCRIPTION</i>	<i>UNIT [\$]</i>	<i>TOTAL [\$]</i>
001	4	EA	LEED-Certified single-family dwelling unit, 2010 NHBP Plans A (2-Bed)	XX	XX
			a. Earthwork		
			b. Concrete (foundations, flatwork)		
			c. Carpentry (rough/finish; windows, doors)		
			d. Roofing, Siding, Masonry		
			e. Drywall, Insulation		
			f. Interior Finishes (floor covering, painting); Appliances		
			g. Electrical, Home Generator System		
			h. Plumbing, HVAC		
			i. Landscaping		
			Subtotal:		[A]
002	4	EA	LEED-Certified single-family dwelling unit, 2010 NHBP Plans B (3-Bed)	XX	XX
			a. Earthwork		
			b. Concrete (foundations, flatwork)		
			c. Carpentry (rough/finish; windows, doors)		
			d. Roofing, Siding, Masonry		
			e. Drywall, Insulation		
			f. Interior Finishes (floor covering, painting); Appliances		
			g. Electrical, Home Generator System		
			h. Plumbing, HVAC		
			i. Landscaping		
			Subtotal:		[B]
003	1		NHBP Job Bank Employment Plan (Allowance)		[C] \$100,000.00
TOTAL [A + B + C]:					

BID BOND

Accompanying this Proposal is a (Bid Bond, Certified Check, Bank Draft) in the amount of **Five Percent (5%) of the Base Bid** payable to the 'Nottawaseppi Huron Band of the Potawatomi' as required by the Advertisement for Bids.

In submitting this bid, it is understood that the right is reserved by the Contracting Officer to reject any and all bids. It is agreed that this bid may not be withdrawn for a period of thirty (30) days from the opening thereof.

If awarded a Contract, the undersigned agrees to begin work and proceed with all possible dispatch to fully complete the work as detailed in the Progress Schedule.

DATE

FIRM NAME

BY: _____

Bidders should not add any conditions or qualifying statements to the bid as the proposal will be declared irregular and considered 'not-responsive' to the Advertisement for Bids.

NON-COLLUSION AFFIDAVIT

STATE OF _____)

COUNTY OF _____)

The undersigned bidder or agent being duly sworn on oath says that he has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting, nor to prevent any person from bidding nor to induce anyone to refrain from bidding and that this bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding in any way or manner whatever.

BIDDER OR AGENT

FIRM OR CORPORATION

Subscribed and sworn to before me this _____ day of _____, 2023.

_____, Notary Public

My Commission Expires: _____

Representations, Certifications, and Other Statements of Bidders

Public and Indian Housing Programs

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1. Certificate of Independent Price Determination

(a) The bidder certifies that--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Contingent Fee Representation and Agreement

(a) Definitions. As used in this provision:

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

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

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

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

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

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

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

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

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

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

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a contract resulting from this solicitation;

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

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

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

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

4. Organizational Conflicts of Interest Certification

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

- (a) Result in an unfair competitive advantage to the bidder; or,
(b) Impair the bidder's objectivity in performing the contract work.
[] In the absence of any actual or apparent conflict, I hereby certify that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement.

5. Bidder's Certification of Eligibility

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

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

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

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

6. Minimum Bid Acceptance Period

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

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

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

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

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

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

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

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

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

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

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

(Check the block applicable to you)

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

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

The bidder represents and certifies that it:

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

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

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

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

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

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

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

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

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

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

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

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

(1) Obtain identical certifications from the proposed subcontractors;

(2) Retain the certifications in its files; and

(3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities

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

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

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

The bidder certifies that:

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

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

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

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

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

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

13. Bidder's Signature

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

(Signature and Date)

(Typed or Printed Name)

(Title)

(Company Name)

(Company Address)

US Department of Housing and Urban Development
Office of Housing/Federal Housing Commissioner**US Department of Agriculture**
Farmers Home Administration

Part I to be completed by Controlling Participant(s) of Covered Projects <i>(See instructions)</i>		For HUD HQ/FmHA use only	
Reason for submission:			
1. Agency name and City where the application is filed		2. Project Name, Project Number, City and Zip Code	
3. Loan or Contract amount \$	4. Number of Units or Beds	5. Section of Act	6. Type of Project (check one) <input type="checkbox"/> Existing <input type="checkbox"/> Rehabilitation <input type="checkbox"/> Proposed (New)
7. List all proposed Controlling Participants and attach complete organization chart for all organizations showing ownership %			
Name and address (Last, First, Middle Initial) of controlling participant(s) proposing to participate		8 Role of Each Principal in Project	
		9. SSN or IRS Employer Number (TIN)	

1. Schedule A contains a listing, for the last ten years, of every project assisted or insured by HUD, USDA FmHA and/or State and local government housing finance agencies in which the controlling participant(s) have participated or are now participating.
2. For the period beginning 10 years prior to the date of this certification, and except as shown on the certification:
- a. No mortgage on a project listed has ever been in default, assigned to the Government or foreclosed, nor has it received mortgage relief from the mortgagee;
- b. The controlling participants have no defaults or noncompliance under any Conventional Contract or Turnkey Contract of Sale in connection with a public housing project;
- c. There are no known unresolved findings as a result of HUD audits, management reviews or other Governmental investigations concerning the controlling participants or their projects;
- d. There has not been a suspension or termination of payments under any HUD assistance contract due to the controlling participant's fault or negligence;
- e. The controlling participants have not been convicted of a felony and are not presently the subject of a complaint or indictment charging a felony. (A felony is defined as any offense punishable by imprisonment for a term exceeding one year, but does not include any offense classified as a misdemeanor under the laws of a State and punishable by imprisonment of two years or less);
- f. The controlling participants have not been suspended, debarred or otherwise restricted by any Department or Agency of the Federal Government or of a State Government from doing business with such Department or Agency;
- g. The controlling participants have not defaulted on an obligation covered by a surety or performance bond and have not been the subject of a claim under an employee fidelity bond;
3. All the names of the controlling participants who propose to participate in this project are listed above.
4. None of the controlling participants is a HUD/FmHA employee or a member of a HUD/FmHA employee's immediate household as defined in Standards of Ethical Conduct for Employees of the Executive Branch in 5 C.F.R. Part 2635 (57 FR 35006) and HUD's Standard of Conduct in 24 C.F.R. Part 0 and USDA's Standard of Conduct in 7 C.F.R. Part 0 Subpart B.
5. None of the controlling participants is a participant in an assisted or insured project as of this date on which construction has stopped for a period in excess of 20 days or which has been substantially completed for more than 90 days and documents for closing, including final cost certification, have not been filed with HUD or FmHA.
6. None of the controlling participants have been found by HUD or FmHA to be in noncompliance with any applicable fair housing and civil rights requirements in 24 CFR 5.105(a). (If any controlling participants have been found to be in noncompliance with any requirements, attach a signed statement explaining the relevant facts, circumstances, and resolution, if any).
7. None of the controlling participants is a Member of Congress or a Resident Commissioner nor otherwise prohibited or limited by law from contracting with the Government of the United States of America.
8. Statements above (if any) to which the controlling participant(s) cannot certify have been deleted by striking through the words with a pen, and the controlling participant(s) have initiated each deletion (if any) and have attached a true and accurate signed statement (if applicable) to explain the facts and circumstances.
- I/We, the undersigned, certify under penalty of perjury that the information provided above is true and correct. **WARNING:** Anyone who knowingly submits a false claim or makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and civil and administrative penalties. (18 U.S.C. §§ 287, 1001, 1010, 1011, 1012, 1014; 31 U.S.C. §3729, 3802).

Name of Controlling Participant	Signature of Controlling Participant	Certification Date (mm/dd/yyyy)	Area Code and Tel. No.
This form prepared by (print name)			Area Code and Tel. No.

Schedule A: List of Previous Projects and Section 8 Contracts. Below is a complete list of the controlling participants' previous participation projects and participation history in covered projects as per 24 CFR, part 200 §200.214 and multifamily Housing programs of FmHA, State and local Housing Finance Agencies, if applicable. **Note:** Read and follow the instruction sheet carefully. Make full disclosure. Add extra sheets if you need more space. Double check for accuracy. If no previous projects, write by your name, "No previous participation, First Experience".

1. Controlling Participants' Name (Last, First)	2. List of previous projects (Project name, project ID and, Govt. agency involved)	3. List Participants' Role(s) (indicate dates participated, and if fee or identity of interest participant)	4. Status of loan (current, defaulted, assigned, foreclosed)	5. Was the Project ever in default during your participation Yes No If yes, explain	6. Last MOR rating and Physical Insp. Score and date

Part II- For HUD Internal Processing Only

Received and checked by me for accuracy and completeness; recommend approval or refer to Headquarters after checking appropriate box.

Date (mm/dd/yyyy)		Tel No. and area code		<input type="checkbox"/> A. No adverse information; form HUD-2530 approval recommended. <input type="checkbox"/> C. Disclosure or Certification problem	
Staff		Processing and Control		<input type="checkbox"/> B. Name match in system <input type="checkbox"/> D. Other (attach memorandum)	
Signature of authorized reviewer		Signature of authorized reviewer		Approved <input type="checkbox"/> Yes <input type="checkbox"/> No	
				Date (mm/dd/yyyy)	

Instructions for Completing the Previous Participation Certificate, form HUD-2530

Carefully read these instructions and the applicable regulations. A copy of the regulations published at 24 C.F.R. part 200, subpart H, § 200.210-200.222 can be obtained on-line at www.gpo.gov and from the Account Executive at any HUD Office. Type or print neatly in ink when filling out this form. Incomplete form will be returned to the applicant.

Attach extra sheets as you need them. Be sure to indicate "Continued on Attachments" wherever appropriate. Sign each additional page that you attach if it refers to you or your record. **Carefully read the certification before you sign it.** Any questions regarding the form or how to complete it can be answered by your HUD Account Executive.

Purpose: This form provides HUD/USDA FmHA with a certified report of all previous participation in relevant HUD/USDA programs by those parties submitting the application. The information requested in this form is used by HUD/USDA to determine if you meet the standards established to ensure that all controlling participants in HUD/USDA projects will honor their legal, financial and contractual obligations and are of acceptable risks from the underwriting standpoint of an insurer, lender or governmental agency. HUD requires that you certify and submit your record of previous participation, in relevant projects, by completing and signing this form, before your participation can be approved.

HUD approval of your certification is a necessary precondition for your participation in the project and in the capacity that you propose. If you do not file this certification, do not furnish the information requested accurately, or do not meet established standards, HUD will not approve your certification.

Note that approval of your certification does not obligate HUD to approve your project application, and it does not satisfy all other HUD program requirements relative to your qualifications.

Who Must Sign and File Form HUD-2530: Form HUD-2530 must be completed and signed by all Controlling Participants of Covered Projects, as such terms are defined in 24 CFR part 200 §200.212, and as further clarified by the Processing Guide (HUD notice H 2016-15) referenced in 24 CFR §200.210(b) and available on the HUD website at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/prevparticipation.

Where and When Form HUD-2530 Must Be Filed: The original of this form must be submitted to the HUD Office where your project application will be processed at the same time you file your initial project application. This form must be filed with applications for projects listed in 24 CFR §200.214 and for the Triggering Events listed at 24 CFR §200.218.

Review of Adverse Determination: If approval of your participation in a HUD project is denied, withheld, or conditionally granted on the basis of your record of previous participation, you will be notified by the HUD Office. You may request reconsideration in accordance with 24 CFR §200.222 and further clarified by the Processing Guide. Request must be made in writing within 30 days from your receipt of the notice of determination.

The Department of Housing and Urban Development (HUD) is authorized to collect this information by law 42 U.S.C. 3535(d) and by regulation at 24 CFR 200.210. This information is needed so that principals applying to participate in multifamily programs can become HUD-approved controlling participants. The information you provide will enable HUD to evaluate your record with respect to established standards of performance, responsibility and eligibility. Without prior approval, a controlling participant may not participate in a proposed or existing multifamily or healthcare project. HUD uses this information to evaluate whether or not controlling participants pose an unsatisfactory underwriting risk. The information is used to evaluate the potential controlling participants and approve only individuals and organizations that will honor their legal, financial and contractual obligations.

Privacy Act Statement: The Housing and Community Development Act of 1987, 42 U.S.C. 3543 requires persons applying for a Federally-insured or guaranteed loan to furnish his/her Social Security Number (SSN). HUD must have your SSN for identification of your records. HUD may use your SSN for automated processing of your records and to make requests for information about you and your previous records with other public agencies and private sector sources. HUD may disclose certain information to Federal, State and local agencies when relevant to civil, criminal, or regulatory investigations and prosecutions. It will not be otherwise disclosed or released outside of HUD, except as required and permitted by law. You must provide all of the information requested in this application, including your SSN. Failure to provide any of the information will result in your disapproval of participation in this HUD program. APPS SORN could be accessed in Federal Register / Vol. 81, No. 146 / Friday, July 29, 2016 / Notices ([Docket No. FR-5921-N-10] Implementation of the Privacy Act of 1974, as Amended; Amended System of Records Notice, Active Partners Performance System).

PRA Statement: The public reporting burden is estimated at 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering, and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions to reduce this burden, to the Reports Management Officer, Paperwork Reduction Project, to the Office of Information Technology, US. Department of Housing and Urban Development, Washington, DC 20410-3600. When providing comments, please refer to OMB Approval No. 2502-0118. HUD may not conduct and sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

NHBP JOB BANK EMPLOYMENT PLAN

1. The Nottawaseppi Huron Band of the Potawatomi (NHBP) Job Bank Employment Plan is not intended to replace any other applicable US Department of Housing & Urban Development (HUD) regulations related to Indian preference which shall be applied to contractors and subcontractors, nor is the Plan intended to replace experienced workers the Contractor deems necessary to complete the project.
 - a. Form HUD-5369, Instructions to Bidders for Contracts – Public and Indian Housing Programs, requires that “Preferences and opportunities for training and employment [...] in connection with the administration of [this] contract or subcontracts be given to qualified ‘Indians’”. Clause 12 of said Form specifies the criteria for compliance with the Indian Self Determination and Education Assistance Act (25 U.S.C. 450e(b)).
 - b. For the purposes of the present HUD funded contract, the completion and successful execution of the NHBP Job Bank Employment Plan, as described herein, will satisfy the requirements of Form HUD-5369, Instructions to Bidders for Contracts – Public and Indian Housing Programs, Clause 12, Sections (f), (g), and (h).
 - c. Indian Preference as it pertains to award of contracts and subcontracts, as described in the remaining sections of Form HUD-5369, Instructions to Bidders for Contracts – Public and Indian Housing Programs, Clause 12, still applies.
2. Included in the undersigned bidder’s proposal is **\$100,000.00** reserved for payroll expenses relating to the employment of up to four (4) workers from the NHBP Job Bank. These expenses shall include wages, benefits, payroll taxes, and social security contributions. Other expenses relating to the immediate training of the Job Bank Workers, such as wages for trainers, equipment, educational materials, etc., shall not be drawn from this allowance.
3. Each Job Bank Worker will be paid wages equal to the locally-determined prevailing wage rate (Davis-Bacon & Related Acts) for the classification in which they are being employed. During the course of the project workers may be shifted from one classification to another provided their wages and work regiment are adjusted accordingly. The Job Bank Workers are not required to be identified at the time of the bid, however, their intended labor classifications are. Additionally, detail of the number of hours budgeted for their involvement in the project and the total estimated payroll burden for each will be required below.
4. After the award is made, the Owner/Contracting Officer will provide the Contractor with a list of four (4) qualified (i.e. ‘skilled’, ‘semi-skilled’) individuals from the NHBP Job Bank. The Owner/Contracting Officer will also provide the Contractor with a list of two (2) additional workers to be utilized as backup in the event that either of the original individuals are unable to perform work as assigned.
5. During the course of construction and at the time of substantial completion, the Owner/Contracting Officer will conduct multiple interviews with such Job Bank Workers to verify the substance of the work assignments and to gauge the labor-effectiveness of the Plan. Job Bank Workers will also be interviewed for compliance with US Department of Labor requirements.
6. **The Owner and the Contractor acknowledge that the requirements of this section are a material part of the present Contract and, as a result, violations of this section will substantially harm the Owner. Furthermore, the Owner and the Contractor agree that actual damages for such violation will be impossible to determine. Accordingly, in the event of a violation of this section, the Owner shall be entitled to liquidated damages for violation of the intent of this section, which**

shall be assessed as follows:

- a. If the Owner determines that the Contractor is not operating in good faith to execute the Job Bank Employment Plan, the Owner may exclude said Contractor from bidding future projects for a period of time decided upon by the Owner.
 - b. At the conclusion of the project the sum total of payroll expenses for the Job Bank Employees must be a minimum of the stipulated allowance. If the Owner determines that the Contractor has not operated in good faith to execute the Job Bank Employment Plan and payroll expenses at the close of the project are less than the original allowance, the Contractor will be penalized the difference times a multiplier of two.
7. The Contractor's intended labor classifications and project hours will be reviewed with the Owner/Contracting Officer and Project Manager prior to award and adjustments may be necessary.
8. If circumstances arise outside the control of the Contractor which prevent or hinder the implementation of this plan, the Contractor shall notify the Owner immediately so that adjustments to the Plan can be arranged which are mutually acceptable to both parties. These circumstances shall include, but not be limited to the following:
 - a. Job Bank Workers failing to adhere to the Contractor or Subcontractor's standard employment policies.
 - b. Termination of subcontract with Subcontractor scheduled to provide employment.
 - c. Job Bank Worker resigning from position and NHBP Job Bank.
9. The Contractor is not permitted to terminate the employment of any Job Bank Worker solely on the basis of the depletion of allowance funds. Job Bank Workers are expected to remain employed on the project until either the project is completed or the work associated with their assigned classifications is completed.
10. The Contractor shall complete the table below (or, in similar format and attached to the present Plan acknowledgement) and submit it with their proposal.

	Labor Classification (MI20230012)	Intended Hours	Hourly Payroll Burden (Rate + Fringes)	Extension
TOTAL:				\$100,000.00

(...)

We, the undersigned, acknowledge the intent of the NHBP Job Bank Employment Plan and shall execute said Plan in good faith according to the above information provided at the time of proposal, subject to modification as permitted above.

BIDDER OR AGENT

FIRM OR CORPORATION

PART VI
SUPPLEMENTAL INFORMATION

"General Decision Number: MI20230012 02/03/2023

Superseded General Decision Number: MI20220012

State: Michigan

Construction Type: Residential

County: Calhoun County in Michigan.

RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none">. Executive Order 14026 generally applies to the contract.. The contractor must pay all covered workers at least \$16.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2023.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none">. Executive Order 13658 generally applies to the contract.. The contractor must pay all covered workers at least \$12.15 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2023.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/06/2023
1	02/03/2023

	Rates	Fringes
ELECTRICIAN.....	\$ 18.00	7.44

ENGI0325-005 06/01/2021		

	Rates	Fringes
OPERATOR: Power Equipment		
GROUP 1.....	\$ 44.13	24.85
GROUP 2.....	\$ 40.83	24.85
GROUP 3.....	\$ 38.18	24.85

FOOTNOTES:

Crane operator with main boom and jib 300' or longer: \$1.50
per hour above the group 1 rate.
Crane operator with main boom and jib 400' or longer: \$3.00
per hour above the group 1 rate.

PAID HOLIDAYS: New Year's Day, Memorial Day, Fourth of July,
Labor Day, Thanksgiving Day and Christmas Day.

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Crane operator with main boom and jib 400', 300', or
220' or longer.

GROUP 2: Crane operator with main boom and jib 140' or
longer, tower crane, gantry crane, whirley derrick

GROUP 3: Bulldozer; Crane; Grader/Blade; Loader; Scraper;
stiff leg derrick

* IRON0025-014 06/01/2022

	Rates	Fringes
IRONWORKER, STRUCTURAL.....	\$ 34.50	38.44

LAB00355-002 06/01/2022		

	Rates	Fringes
LABORER: Mason Tender - Cement/Concrete.....	\$ 24.90	12.95

PAIN0312-011 06/12/2014		

	Rates	Fringes
PAINTER: Brush and Roller.....	\$ 21.75	11.94

PLUM0333-014 06/18/2018		

	Rates	Fringes
PIPEFITTER (HVAC Pipe Installation Only).....	\$ 25.82	18.47

ROOF0070-016 06/01/2022		

	Rates	Fringes
ROOFER.....	\$ 30.03	16.84

SHEE0007-023 05/01/2018		

	Rates	Fringes
SHEET METAL WORKER, Includes HVAC Duct and Unit Installation.....	\$ 24.93	9.65

* SUMI2010-010 09/16/2010		

	Rates	Fringes
CARPENTER.....	\$ 18.81	6.38
CEMENT MASON/CONCRETE FINISHER...	\$ 19.27	5.85
LABORER: Common or General.....	\$ 16.87	5.46
LABORER: Landscape.....	\$ 9.64 **	2.81
LABORER: Pipelayer.....	\$ 17.95	5.46
OPERATOR: Backhoe/Excavator.....	\$ 19.94	5.46
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 17.66	7.65
PLUMBER, Excludes HVAC Pipe Installation.....	\$ 26.17	7.55
TRUCK DRIVER: Dump Truck.....	\$ 17.00	5.71

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$16.20) or 13658 (\$12.15). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at

<https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the

classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor

200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISIO"

US FISH AND WILDLIFE SERVICE
Michigan Ecological Services Field Office

General Project Design Guidelines and General Best Management Practices
[Sec. 7(a)(2) Endangered Species Act 1973]

PROJECT NAME: NHBP PHASE VIII RESIDENTIAL DEVELOPMENT (LEED)

PROJECT LOCATION: SEC 21 T4S R8W ATHENS TWP., CALHOUN COUNTY, MI

Effect Determination for the Proposed Action (Michigan DKey):

Species	Listing Status	Determination
Eastern Massasauga (= rattlesnake) <i>Sistrurus catenatus</i>	Threatened	NLAA

The proposed action (project) is within the known range of EMR, but outside of Tier 1 and Tier 2 habitat. To help ensure your project is unlikely to affect EMR, the following General Best Management Practices are recommended:

1. Use wildlife safe materials for erosion control and site restoration. By January 1, 2019, eliminate the use of erosion control products containing plastic mesh netting or other similar material that could ensnare EMR.
 - a. **Erosion Control Resources.** There are a variety of products that can be used for soil erosion and control requirements. These products may incorporate plastic mesh netting to help maintain form and function. This plastic netting has been demonstrated to entangle a wide variety of wildlife from birds to small mammals. In Michigan soil erosion control netting has resulted in the documented mortality of a number of imperiled amphibian and reptile species including the EMR and the Eastern Fox Snake (State Threatened). Several Products for soil erosion and control exist that do not contain plastic netting including net-less erosion control blankets, loose hydraulic mulch, soil binders, unreinforced silt fences, and straw bales. Others are made from natural fibers (such as jute) and loosely woven together in a manner that allows wildlife to wiggle free. For more information regarding wildlife-safe erosion control measures contact the USFWS Michigan Ecological Services Field Office.
2. **To increase human safety and awareness of EMR, those implementing the project should first watch MDNR's "60-Second Snakes: The Eastern Massasauga Rattlesnake" video (available at https://youtu.be/-PFnXe_e02w) and review the attached EMR Fact Sheet.**
3. Report any EMR observations, or observations of any other listed threatened or endangered species, during project implementation to the Service within 24 hours.
4. Project will not have significant impacts to dispersal, connectivity, or hydrology of existing EMR potential habitat, i.e. filling less than one acre of wetland habitat or converting less than twenty

acres of uplands of potential EMR habitat (uplands associated with high quality wetland habitat) to other uses.

5. **Within the Known Range, but Outside Tier 1 or 2 Coordination Recommendation.** Document the steps above for your records and no pre-project coordination with the Service is necessary. If you cannot implement the General Best Management Practices, contact the Service for assistance in evaluating potential impacts.

References:

USFWS, 'Subject: List of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project' Consultation Code: 03E16000-2021-SLI-1676, June 16, 2021

USFWS, 'Subject: Consistency letter for NHBP Phase VIII Residential Development for specified federally threatened and endangered species and designated critical habitat that may occur in your proposed project area consistent with the Michigan Determination Key for project review and guidance for federally listed species (Michigan Dkey)' IPaC Record Locator: 628-105005176, September 1, 2021

NHBP, 'Section 7 Endangered Species Act Consultation – NHBP Phase VIII Residential Development', July 21, 2021

enclosure(s)



Eastern Massasauga *Sistrurus catenatus*

The eastern massasauga rattlesnake has been listed as a threatened species under the Endangered Species Act. Threatened species are animals and plants that are likely to become endangered in the foreseeable future. Identifying, protecting, and restoring endangered and threatened species is the primary objective of the U.S. Fish and Wildlife Service's endangered species program.

What is an eastern massasauga rattlesnake?

Appearance: Massasaugas are small snakes with thick bodies, heart-shaped heads and vertical pupils. The average length of an adult is about 2 feet. Adult massasaugas are gray or light brown with large, light-edged chocolate brown blotches on the back and smaller blotches on the sides. Young snakes have the same markings, but are more vividly colored. Other snakes that look similar include the fox snake, milk snake and hognose snake.

Habitat: Massasaugas live in wet areas including wet prairies, marshes and low areas along rivers and lakes. In many areas massasaugas also use adjacent uplands during part of the year. They often hibernate in crayfish burrows but may also be found under logs and tree roots or in small mammal burrows. Unlike other rattlesnakes, massasaugas hibernate alone.

Reproduction: Like all rattlesnakes, massasaugas bear live young. Depending on their health, adult females may bear young every year or every other year. When food is especially scarce they may only have young every three years. Most massasaugas mate in late summer, and give birth about a year later. Litter size varies from 5 to 20 young.

Feeding Habits: Massasaugas eat small rodents such as mice and voles but they sometimes eat frogs and other snakes. They hunt by sitting and waiting. Heat sensitive pits near the snakes' eyes alert the snake to the presence of prey. They can find their prey by sight, by feeling vibrations, by sensing heat given off by their prey, and by detecting chemicals given off by the animal (like odors).

Range: Eastern massasaugas live in an area that extends from central New York and southern Ontario to southcentral Illinois and eastern Iowa. Historically, the snake's range covered this

Massasaugas are docile, secretive snakes that will try to escape rather than fight. But they will protect themselves and may bite if cornered. Be cautious in massasauga areas by wearing leather boots or shoes, watching where you place your hands and feet and walking around, rather than over, fallen logs. Treat massasaugas with respect, like any wild animal. If you are bitten by a massasauga, seek medical help immediately.



Photo courtesy of Dan Kennedy; Michigan DNR

same area, but within this large area the number of populations and numbers of snakes within populations have steadily shrunk. Generally, only small, isolated populations remain. The eastern massasauga is listed as endangered, threatened, or a species of concern in every state and province where it is found.

Why has the eastern massasauga been listed as a threatened species?

Eradication: People seem to have an innate fear of snakes and fear of venomous snakes is particularly strong. Massasaugas are often killed when they show up near homes or businesses, and people may go out of their way to kill or even eliminate them. Indeed, many states had bounties on all rattlesnakes, including massasaugas.

Habitat loss: Massasaugas depend on wetlands for food and shelter and often use nearby upland areas during part of the year. Draining wetlands for farms, roads, homes, and urban expansion has eliminated much of the massasauga habitat. Also, massasaugas are not long distance travelers, so roads, towns, and farm fields prevent them from moving between the wetland and upland habitats they need. These same barriers also separate and isolate remaining populations from each other. Small, isolated populations often continue on a downward spiral until the massasauga is lost from those areas.

Management: Lack of management and improper timing of management are threats to

massasaugas. The snake's habitat needs vegetation control such as prescribed fire and mowing to prevent invasion of shrubs, trees and non-native plants. Woody plant invasion is reducing the amount of available habitat in some areas. Where land is managed to prevent woody invasion, snakes may be killed by prescribed fire and mowing when it happens after snakes emerge from hibernation.

What is being done to conserve the eastern massasauga?

Research: Researchers are studying the eastern massasauga to learn about its life history, about how it uses its habitat, and how we can manage for it and its habitat.

Habitat Management: Many remaining populations of massasaugas are on public land and privately owned natural areas. Some land management practices on those properties harm massasaugas. The Service is working with willing land managers to practice techniques that allow traditional management goals to continue but avoid harming the massasauga and its habitat.

Education: Although many people have an innate fear of massasaugas, it is actually a secretive, docile snake that strikes humans only when it feels threatened and cornered. Living, working, or recreating in massasauga areas does require caution, but the massasauga is also an important and beautiful part of the natural heritage of those areas. We hope that

education about the docile nature of the snake, its habits, and its role in the ecosystem will help people feel more comfortable living with this rare creature.

Why do we want to conserve the eastern massasauga?

Ecosystem Role: The massasauga plays an important role in its ecosystems, both as a predator on small mammals, other snakes, and amphibians and as prey for hawks, owls, cranes, and some mammals.

Indicator Species: The fact that massasaugas are in serious decline is a warning bell telling us that something is wrong. The story of the massasauga is similar to the story of many plants and animals that need wetlands or a combination of wetlands and uplands to survive. When we drain wetlands and develop in natural areas, we push our wild plants and animals onto ever smaller isolated islands of habitat where it is difficult for them to survive. By conserving massasaugas, we conserve natural systems that support many species of plants and animals.

*U.S. Fish & Wildlife Service
5600 American Blvd., Suite 990
Bloomington, Minnesota 55437
612/713-5350
<http://www.fws.gov/midwest/endangered>*

September 2016