

**REQUEST  
FOR  
PROPOSALS**

**FOR**

**FIRE INSPECTION  
AND  
EXTINGUISHER SERVICES**

**FOR THE**

**HOUSING AUTHORITY OF THE  
CITY OF SAN BUENAVENTURA**

**And**

**AFFILIATED ENTITIES**

**995 RIVERSIDE STREET  
VENTURA, CA 93001**

**Submittal Deadline**

**4 PM, TUESDAY MAY 15, 2018**

**The responsibility for submitting a response to this RFP at the offices of the Housing Authority of the City of San Buenaventura (the “Authority”) on or before the stated time and date will be solely and strictly the responsibility of the Offeror. The Authority will in no way be responsible for delays caused by the United States Mail delivery or caused by any other occurrence.**

## I. GENERAL INFORMATION

### A. BACKGROUND/INTRODUCTION

The Housing Authority of the City of San Buenaventura (herein referred to as the “HACSB”) was organized in 1949 with the primary goal to provide a decent home in a suitable environment for families which could not afford standard private housing. The Authority’s programs are administered at the local level in accordance with Federal and State Law.

The Department of Housing and Urban Development (HUD) has entered into Annual Contributions contract(s) with the Authority for annual contributions (financial assistance) for the operation of the Programs. General supervision, direction and program guidance are provided through the HUD Office in Los Angeles, California.

HACSB is responsible for the development of low-income rental projects, implementation of financing to promote low-income housing production, management of publicly owned or assisted housing projects, operation of rent-subsidy programs & rehabilitation of existing housing stock. HACSB serves the incorporated and the unincorporated areas of the City of Ventura.

HACSB staff has expertise in real estate development, property management, housing services, rehabilitation and administration, which includes Fiscal Services, Financial Management, Human Resources, Equal Opportunity/Contracting, purchasing, buildings facilities, and risk management. HACSB staff is culturally diverse and provides bilingual services in English, Spanish, or any other language necessary to communicate with our clients served.

HACSB Board of Commissioners consists of seven members appointed by City Council of the City of Ventura. Five members of the Board serve four-year terms and the two Resident Commissioners serve two-year terms. The Board is responsible for establishing HACSB policy, long-term goals, objectives and direction.

**For work planning purposes, please note, HACSB works a 4/10 work schedule with Fridays off.**

### B. PURPOSE

The purpose of this Request for Proposal (RFP) is to solicit responses from qualified firms to provide **fire extinguisher service and yearly inspection service** And an hourly rate for any exigent repairs and service outside of the aforementioned

### C. BOARD

The powers of the Authority are vested in the Board of Commissioners of the Authority (“the Board”).

#### **D. CONTACT INFORMATION**

**William Sholy**

Housing Authority of the City of San Buenaventura

995 Riverside Street

Ventura, CA 93001

805-648-5008 ext. 2235

wsholy@hacityventura.org

#### **E. SCOPE OF SERVICES**

A full range of professional services will be required. The scope of services includes the following:

- Annual visit to each property of HACSB and its affiliates (Attachment A) to inspect and test fire alarm, sprinklers, and other systems as directed to ensure compliance with current fire safety codes.
- Annual visit to each property of HACSB and its affiliates to inspect all fire extinguishers within that facility/building/property.
- Annual inspections of all fire extinguishers located in all agency vehicles, equipment, and other off-site locations.
- Any repairs or services to fire safety systems or fire extinguishers outside of the normal scope which can be billed at an hourly rate.
- Annual reports of all fire safety systems, fire sprinkler systems, fire extinguisher inspections and maintenance, and other such related reports along with follow-up reports when necessary.

#### **F. EXPENSE ASSOCIATED WITH PROPOSAL SUBMISSION**

All expenses involved with the preparation and submission of proposals to the Authority shall be borne by the Offeror.

#### **G. HOUSING AUTHORITY OPTIONS**

The Authority may, at its sole and absolute discretion, reject any and all, or parts of any and all, proposals; re-advertise this RFP; postpone or cancel, at any time, this RFP process; or waive any irregularities in this RFP or in the proposals received as a result of this RFP. Also, the determination or the criteria and process whereby proposals are evaluated, the decision as to who shall receive a contract award, or whether or not an award shall ever be made as a result of this RFP, shall be at the sole and absolute discretion of the Authority.

## **II. RFP INSTRUCTIONS**

### **A. RFP Submission and Format**

Please submit one (1) original, two (2) copies, and (1) USB/CD copy of your response in the same package clearly marked on the outside "Response to RFP For Annual Independent Audit Services" to the Housing Authority of the City of San Buenaventura addressed to:

**Will Sholy, Maintenance Manager**  
**Housing Authority of the City of San Buenaventura**  
**995 Riverside Street**  
**Ventura, CA 93001**

**The Proposal will be organized as follows:**

**Review the attached Form HUD-5369-B:** Instructions to Offerors Non- Construction (Attachment B) and **Form HUD-5370C:** General Conditions for Non-Construction Contracts (Attachment C)

**Tabbed Proposal Submittal:** The HA intends to retain the successful proposer pursuant to a "Best Value" basis, not a "Low Bid" basis ("Best Value," in that the HA will consider factors other than just cost in making the award decision). Therefore, so that the HA can properly evaluate the offers received, all proposals submitted in response to this RFP must be formatted in accordance with the sequence noted following. Each category must be separated by numbered index dividers (which number extends so that each tab can be located without opening the proposal) and labeled with the corresponding tab reference also noted below. None of the proposed services may conflict with any requirement the HA has published herein or has issued by addendum.

- i. Cover Letter** - This letter should introduce the project team, naming the key players and highlighting your company's qualifications for this project;
- ii. Company Profile** - Company history; number of years in business; including whether the company is a Section 3, minority or women owned business;
- iii. Project Experience & References** - Please provide a list of services provided for similar size projects completed or in progress along with three references of similar type projects (please include name, title, organization, contact number); Note: do not use Housing Authority of the City of San Buenaventura staff for reference purposes;
- iv. Project Fees** – Please provide General Terms and Conditions and fees for this work.

- v. **Legal Factors** – Please provide a list of outstanding lawsuits including claims both settled and unsettled for the past five (5) years, along with a self-certification that the Respondent has no active federal, state or public agency disqualification.
- vi. **Form HUD-5369-C (8/93), *Certifications and Representations of Offerors, Non-Construction Contract***: This Form is attached hereto as (Attachment D) to this RFP document. This 2-page Form must be fully completed, executed where provided thereon and submitted under this tab as a part of the proposal submittal.
- vii. **Section 3 Business Preference Documentation (Optional Item)**: For any proposer claiming a Section 3 Business Preference, he/she shall under this tab include the fully completed and executed Section 3 Business Preference Certification Form attached hereto as Attachment E and any documentation required by that form.
- viii. **PSA** – A copy of the Professional Services Agreement is attached (Attachment F).

## **B. RFP Terms and Conditions**

The Authority reserves the right to select more than one respondent (and will accept joint venture proposals), to select a respondent(s) for specific purposes or for any combination of specific purposes and to defer the selection of any respondent(s) to a time of the Authority's choosing.

### **1. Board and Staff Communications**

Under no circumstances may any member of the Board or any staff member other than the contacts specified in Paragraph I(E) be contacted during this RFP process by any entity intending to submit a response to this RFP. Failure to comply with this request will result in disqualification. All questions should be directed to the individuals identified in paragraph I (E).

### **2. Timetable for Submission**

The deadline for submissions in response to this Request for Proposals **4 pm, Tuesday May 15, 2018** . Electronic and FAX responses will not be accepted for this request.

### **3. Release of Information**

Information submitted in response to this RFP will not be released by the Authority during the proposal evaluation process or prior to a contract award.

#### **4. Propriety Information**

- All materials submitted in response to a federally funded solicitation must be made available to the public once a selection has been made. Hence potential Respondents are forewarned that any proprietary information contained in their response will upon request be available to the public after contract award.
- All work papers prepared in connection with the contracted services will remain the property of the successful bidder. The work papers must be retained for a period of five years and be made available to HACSB upon request.
- All reports rendered to HACSB are the exclusive property of HACSB and subject to its use and control.

#### **5. Terms of Contract**

- The contract award will be made based on the RFP that best meets the needs of the HACSB taking into consideration compliance with the general requirements of the RFP, evaluation criteria, scope of the work or any other factors deemed to be appropriate and shall not be confined to price alone. The HACSB also reserves the right to accept or reject any and all RFP's received, waive irregularities and negotiate with individual firms regarding the terms of the RFP's or parts thereof, as set forth in section I(H) above.
- The contract will be for one (1) year firm fixed contract with the option to renew at the sole discretion of HACSB for up to two (2) additional one-year periods.
- However, HACSB may terminate the audit contract upon written notice to the Contractor not less than sixty (60) days before the close of the fiscal year to be audited.
- **Insurance:** Before the services can be rendered, the selected firm must provide proof of insurance as set forth below, in a minimum amount of \$1,000,000 per occurrence and Workers' Compensation as required by Law. Certificates of Insurance acceptable to the Housing Authority must be submitted prior to commencement of any work. These certificates shall contain a provision that coverage afforded under the policies will not be cancelled unless thirty (30) day prior written notice has been given to the HACSB. If the insurance described above is cancelled, HACSB reserves

the right to terminate the contractual relationship upon thirty (30) days' notice.

Professional Liability	Required Limits
HACSB and its affiliates must be named as an Additional Insured and be a Certificate Holder. This is required for vendors who render observational services to HACSB such as appraisers, inspectors, attorneys, engineers or consultants.	\$1,000,000
Business Automobile Liability	Required
HACSB and its affiliates must be named as an additional insured and as the certificate holder. This is required for any vendor that will be using their vehicle to do work on HACSB properties.	\$500,000 combined Single limit, per occurrence
Workers Compensation and Employer's Liability	Required Limits
Workers' Compensation coverage is Statutory and has no pre-set limits. Employer's Liability limit is \$500,000. Workers' Compensation is required for any vendor made up of more than two persons. A Waiver of Subrogation in favor of HACSB must be included in the Workers' Compensation policy.	<b>Statutory</b> \$500,000 bodily injury for each accident \$500,000 bodily injury by disease for each employee \$500,000 bodily injury disease aggregate
Commercial General Liability	Required Limits
This is required for any vendor who will be doing hands on work at HACSB properties. HACSB and its affiliates must be named as an Additional Insured and as the Certificate Holder.	\$1,000,000 per accident \$2,000,000 aggregate

- **Contract for Services:** The HACSB will contract only with the selected firm. The selected firm shall not assign the agreement, nor any part without the prior written consent of HACSB.
- **Vendor Representative:** The HACSB reserves the right to request a change in the selected firm's representation if, at our discretion, assigned personnel are not satisfying the needs of HACSB.
- **Infringement and Indemnification:** The firm awarded this contract, agrees to protect, defend and hold harmless HACSB against any demand for payment for use of any patented material, process, article, or device that it may enter into the rendering of the necessary services. Furthermore, the selected firm agrees to indemnify and hold harmless HACSB, its Board of Commissioners and employees from any liability whatsoever; including wrongful death, based or asserted upon any act or omission of the bidder, its employees, sub-contractors and agents relating to or in any way connected with the accomplishment of the work or performance of service under this agreement. As part of the foregoing indemnity the successful bidder agrees to carry a minimum Commercial General

Liability insurance coverage of \$1,000,000 per each occurrence and naming HACSB as additional insured.

- **Liquidated Damages:** For each day that performance under a resulting contract from this RFP is delayed beyond the time specified for completion, the successful proposer shall be liable for liquidated damages in the amount of \$50.00 per day. However, the timeframe for performance may be adjusted at HACSB's discretion in writing and received by the successful proposer prior to default under any resulting contract.
- **Unacceptable Employees:** If any employee of the Contractor is deemed unacceptable by HACSB, Contractor shall immediately replace such personnel with a substitute acceptable to HACSB.

**6. The Authority Reserves the Right to:**

- Request an oral interview with and any additional information from firms prior to final selection of the Consultant.
- Consider information about a firm in addition to the information submitted in the response or interview.
- Reject any and all responses and waive any irregularities.
- Negotiate the fees proposed by all proposers. If such negotiations are not, in the opinion of HACSB successfully concluded within a reasonable timeframe as determined by HACSB, HACSB shall retain the right to end such negotiations.
- To retain all proposals submitted and not permit withdrawal for a period of 90 days subsequent to the deadline for receiving proposals without the written consent from HACSB.
- Reduce or increase estimated or actual quantities in whatever amount necessary without prejudice or liability to HACSB, if:
  - a. Funding is not available,
  - b. Legal restrictions are placed upon the expenditure of monies for this category of service or supplies; or,
  - c. HACSB's requirements in good faith change after award of the contract.
- Without any liability; cancel the award of any proposal(s) at any time before the execution of the contract documents by all parties

**7. Non Discrimination/Conflict of Interest.**



- **Affirmative Action:** The Offeror warrants adhering to all civil rights, equal opportunity, and fair housing and Section 3 regulations. HACSB strongly encourages minority-owned and women-owned businesses, socially and economically disadvantaged business enterprises, and small businesses to submit proposals, to participate as partners, or to participate in other business activity in response to this RFP.

Section 3 of the Housing and Urban Development Act of 1968 requires HACSB to the greatest extent feasible to provide employment opportunities to the Section 3 residents. Section 3 residents include residents of HACSB communities and other low-income residents of the City of San Buenaventura.

The firm awarded the contract agrees to use its best efforts to subcontract and employ Section 3 residents, minority business enterprises and/or women business enterprises. HACSB is an equal opportunity employer and requires its entire contractor to comply with polices and regulations concerning equal employment opportunity.

### III. SELECTION PROCESS AND CRITERIA

#### Evaluation and Selection Criteria for Contract Award

Selection criteria will be based on the following:

CRITERION DESCRIPTION	POINTS
<b>Qualifications, Licensing, and Experience:</b> Provide evidence of past performance and experience. List the number of years that reflect vendor's experience with Housing Authority and/or other related Housing Complexes. Affirm that your business is properly licensed	<b>20</b>
<b>Management and Quality Plan:</b> The proposer must submit a concise description of its managerial capacity to deliver the proposed services, including brief professional resumes for the persons identified to work on this project. Such information shall include the proposer's qualifications to provide the services; a description of the background and current organization of the firm. Provide a plan or procedure to monitor employee's performance during the contract period.	<b>20</b>
<b>Agency Approach:</b> Quality of the proposal in terms of methodology and approach to the audit with statement of full understanding of the audit objectives and overall scope of work to be performed.	<b>10</b>
<b>Timeframe:</b> Able to meet all deadlines specified	<b>15</b>
<b>Price Proposal:</b> Price to provide services	<b>20</b>
<b>Section 3/Minority or Women Owned</b>	<b>15</b>
<b>TOTAL POINTS</b>	<b>100</b>

**ATTACHMENT "A"**

<b>Property</b>	<b>Address</b>	<b>Units</b>
AMP 1	Westview including 995 Riverside Street	Executive Office; 108
VDMC	137 Palms	75
	148 Palms	16
	66 Ventura Avenue	53
Johnson Gardens	1055 Johnson	25
	1079 Johnson	25
	9620 Telephone Road	51
Buena Vida	9050 Telephone Road	75
	9054-9092 Telephone	20
Amp 4	10540 Daisy	20
	60-98 Cambria	20
	9808-98800 Jamestown	20
	1050 Partridge	20
	7995 Telephone Rd	20
AMP 5	2400 Ventura Avenue	20
	323-329 Park Row	4
	217-233 Harrison	4
	52-66 Laurel	8
	103-109 Hemlock	4
	1216 Santa Clara	28
	150-166 Santa Cruz	4
32 Joanne	4	
Non Hud	123 Ventura Ave (Rose Garden)	16
	207-215 Vince	3
	1155 N. Olive	5
	1150 Ventura Avenue (SOHO)	12
	375 E Thompson Blvd (Encanto Del Mar)	28
	11122 Chapel Lane	38
	3005 Main Street (Castillo Del Sol)	40

**Future HACSB and Affiliate Developments**

**ATTACHMENT "B"**  
**Form HUD-5369-B: Instructions to Offerors Non-Construction**

# Instructions to Offerors Non-Construction

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



- 03291 -

## 1. Preparation of Offers

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

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

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

## 2. Submission of Offers

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

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

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

## 3. Amendments to Solicitations

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

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

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

## 4. Explanation to Prospective Offerors

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

## 5. Responsibility of Prospective Contractor

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

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

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

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

## 6. Late Submissions, Modifications, and Withdrawal of Offers

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

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

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

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

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

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

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

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

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

#### **7. Contract Award**

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

(b) The HA may

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

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

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

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

#### **8. Service of Protest**

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

#### **9. Offer Submission**

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

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

[Describe bid or proposal preparation instructions here:]

**ATTACHMENT "C"**

**Form HUD-5370C: General Conditions for Non-Construction Contracts**

# General Conditions for Non-Construction Contracts

## Section I – (With or without Maintenance Work)

### U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

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

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

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

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

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

#### 1. Definitions

The following definitions are applicable to this contract:

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

#### 2. Changes

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

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

#### 3. Termination for Convenience and Default

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

#### 4. Examination and Retention of Contractor's Records

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

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

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

#### 5. Rights in Data (Ownership and Proprietary Interest)

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

#### 6. Energy Efficiency

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

#### 7. Disputes

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

#### 8. Contract Termination; Debarment

#### 9. Assignment of Contract

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

#### 10. Certificate and Release

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

#### 11. Organizational Conflicts of Interest

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

#### 12. Inspection and Acceptance

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



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

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

### 13. Interest of Members of Congress

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

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

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

### 15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

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

(ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

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

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

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

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

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

(iii) Selling activities by independent sales representatives.

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

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

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

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

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

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

---

## 16. Equal Employment Opportunity

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

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

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

## 17. Dissemination or Disclosure of Information

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

## 18. Contractor's Status

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

## 19. Other Contractors

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

## 20. Liens

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

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

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

---

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

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

## **22. Procurement of Recovered Materials**

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

**ATTACHMENT "D"**

**Form HUD-5369-C, Certifications and Representations of Offerors, Non-Construction  
Contract**

# Certifications and Representations of Offerors Non-Construction Contract

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

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

## 1. Contingent Fee Representation and Agreement

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

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

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

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

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

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

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

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

(Check the block applicable to you)

- |   |   |
|---|---|
| <input type="checkbox"/> Black Americans    | <input type="checkbox"/> Asian Pacific Americans  |
| <input type="checkbox"/> Hispanic Americans | <input type="checkbox"/> Asian Indian Americans   |
| <input type="checkbox"/> Native Americans   | <input type="checkbox"/> Hasidic Jewish Americans |

## 3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

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

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

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

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

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

#### 4. Organizational Conflicts of Interest Certification

(a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed contract and a prospective contractor's organizational, financial, contractual or other interest are such that:

- (i) Award of the contract may result in an unfair competitive advantage;
- (ii) The Contractor's objectivity in performing the contract work may be impaired; or
- (iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.

(b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract for the convenience of HA if it would be in the best interest of HA.

(c) In the event the Contractor was aware of an organizational conflict of interest before the award of this Contract and intentionally did not disclose the conflict to the HA, the HA may terminate the Contract for default.

(d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

#### 5. Authorized Negotiators (RFPs only)

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

#### 6. Conflict of Interest

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

#### 7. Offeror's Signature

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

---

Signature & Date:

---

Typed or Printed Name:

---

Title:

---

**Attachment "E"**

**Section 3 Business Preference Documentation (Optional Item)**



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

NAME OF BUSINESS: \_\_\_\_\_

ADDRESS OF BUSINESS: \_\_\_\_\_

TYPE OF BUSINESS:       Corporation       Partnership       Sole Proprietorship       Joint Venture

Attached is the following documentation as evidence of status:

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

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

**For the business entity as applicable:**

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

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

List of subcontracted Section 3 business and subcontract amount

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

- |  |   |
|--|---|
| <input type="checkbox"/> List of all current full time employees                           | <input type="checkbox"/> List of all employees claiming Section 3 status                                |
| <input type="checkbox"/> PHA Residential lease (less than 3 years from date of employment) | <input type="checkbox"/> Other evidence of Section 3 status (less than 3 years from date of employment) |

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

- |   |  |
|---|--|
| <input type="checkbox"/> Current financial statement    | <input type="checkbox"/> List of owned equipment                                       |
| <input type="checkbox"/> Statement of ability to comply | <input type="checkbox"/> List of all contracts for the past 2 years with public policy |

**Corporate Seal**

\_\_\_\_\_  
Authorizing Name and Signature

\_\_\_\_\_  
Notary

\_\_\_\_\_  
Title

My term expires: \_\_\_\_\_

Signature

Date

Printed Name

**SUGGESTED AFFIRMATIVE ACTION PLAN FOR UTILIZATION OF PROJECT AREA BUSINESSES**

Number Of All Contracts Proposed: \_\_\_\_\_

Name Of Company: \_\_\_\_\_

Dollar Value Of All Contracts Proposed: \_\_\_\_\_

Project: \_\_\_\_\_

To The Greatest Extent Feasible, Contracts Will Be Awarded Through Negotiation Or Proposal To Qualified Project Area Businesses.

Goal Of These Contracts For Project Area Businesses:

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

Outline The Program To Achieve These Goals For Economically And Socially Disadvantaged:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**NOTE: To Complete The Affirmative Action Plan, Follow Steps Outlines In Attached Exhibit.**

(INSERT THIS DOCUMENT IN PROPOSAL DOCUMENTS AND WITH PROPOSAL) DATE: \_\_\_\_\_

Signature

Date

Printed Name

**SUGGESTED AFFIRMATIVE ACTION PLAN FOR UTILIZATION OF PROJECT AREA BUSINESSES  
(con'd)**

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

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PROJECT: \_\_\_\_\_

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

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

## SECTION 3 BUSINESS PREFERENCE CLAUSE

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

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

## PREFERENCE FOR SECTION 3 BUSINESS CONCERNS IN CONTRACTING OPPORTUNITIES

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

### Priority I

#### Category 1a Business

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

### Priority II

#### Category 1b Business

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

### Priority III

#### Category 2a Business

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

### Priority IV

#### Category 2b Business

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

### Priority V

#### Category 3 Business

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

### Priority VI

#### Category 4a Business

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

### Priority VII

#### Category 4b Business

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

### Eligibility for Preference

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

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

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

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

**Attachment “F”**  
**Professional Services Agreement**

## PROFESSIONAL SERVICES AGREEMENT

This Agreement is entered into as of this \_\_\_\_\_ between the Housing Authority of the City of San Buenaventura, its directors, officers, agents and other representatives (collectively, "HACSB") and \_\_\_\_\_ its heirs, successors or assigns, agents, or other representatives ("collectively, Contractor").

### RECITALS

Whereas, Contractor possess particular skill and expertise in the area of \_\_\_\_\_ and performs such services on a consulting basis;

Whereas, HACSB is in need of such services;

Now, therefore, HACSB wishes to engage the services of Contractor subject to the terms and conditions set forth herein:

1. **Scope of Consulting Duties.** In exchange for the compensation set forth below, Contractor shall provide consulting services outlined in Exhibit A.

2. **Reporting.** Contractor shall receive direction with regard to consulting services desired from \_\_\_\_\_ and shall direct all reports, questions or communications to \_\_\_\_\_ as needed.

3. **Timing of Services.** Except for meeting any project deadlines and complying with any budget limitations established by HACSB with the agreement of Contractor, Contractor shall set his/her own hours and days of work, and shall be solely responsible for determining the dates, amount and frequency of time spent performing services to HACSB.

4. **Compensation.** Contractor shall be paid a rate of \$x per hour in hourly fees OR per the Time and Materials Fee Schedule attached as Exhibit B to this contract during which consulting services are rendered pursuant to the terms of this Agreement, with total payment for all services rendered hereunder not to exceed \_\_\_\_\_ without the prior written approval of HACSB. Contractor shall invoice HACSB for all such services performed by no later than the last business day of each month, and shall provide supporting documentation for all such invoicing. HACSB shall pay each invoice by no later than thirty (30) days following receipt of said invoice by check made payable to Contractor. Contractor shall provide appropriate tax identification information to HACSB.

5. **Expenses and Equipment.** Contractor shall be solely responsible for all personal out-of-pocket expenses (including but not limited to travel charges, mileage, meals, supplies, electronic equipment, business accounts or other personal expenses) incurred in connection with the performance of the duties described hereunder.

6. **Staff.** Contractor shall have the right to retain staff as necessary to support Contractor's performance of the services contemplated hereunder, without the prior approval of HACSB. Contractor shall inform HACSB of the identity of any such personnel within three (3) business days



of retaining such personnel. Contractor shall comply with form HUD-50070 Certification for a Drug-Free Workplace. (Exhibit D)

7.

**8. Compliance With Laws.** The Contractor, in its performance of its obligations under this Agreement, shall comply with all laws, ordinances, codes, rules, regulations, licensing, permitting or certification requirements that are applicable to the conduct of the Contractor's business and its performance of the services under this Agreement. If the Contractor performs services contrary to applicable laws, ordinances, codes, rules and regulations, the Contractor shall assume responsibility for such services and shall bear the costs attributable to correction.

**9. Term of Agreement.** This Agreement will be deemed awarded only after the Agreement has been formally approved and signed by both parties. Contractor will have no authority to start work, no payment will be authorized by HACSB, and HACSB will not be liable for any materials purchased or services rendered by the Contractor prior to the award of the contract. This agreement shall commence on \_\_\_\_\_, and terminate on \_\_\_\_\_ (no more than three years later) and shall continue until terminated by either party. Upon termination, Contractor shall be entitled to payment in full for all services performed prior to notice of termination.

**10. Termination of Agreement.** Either party may terminate this Agreement upon ten (10) days' written notice to the other party. HACSB may immediately terminate this Agreement for cause if Contractor fails or refuses to comply with the policies or reasonable directives of HACSB, is guilty of misconduct in connection with performance of his/her services to HACSB, or materially breaches provisions of this Agreement.

**11. Assignment.** Contractor shall have no right to assign his/her rights and obligations hereunder to any third party. HACSB may assign its rights and obligations under this Agreement to a third party only upon the written approval of Contractor.

**12. Scope of Authority.** Contractor has no authority to take action outside the scope of the duties described above on behalf of HACSB without the prior approval of HACSB, and may not hold him/herself out as having such authority. Neither party has the right to bind the other party to any agreement with a third party or to incur any obligation or liability on behalf of the other party.

**13. Confidentiality.** Contractor acknowledges that during the engagement he/she will have access to and become acquainted with various trade secrets, inventions, innovations, member records or information, processes, information, records, data and ideas by HACSB and/or used by HACSB in connection with the operation of its business. Contractor agrees that he/she will not disclose any of this property or information, directly or indirectly, or use any of it in any manner for the benefit of him/herself or for any third party, either during the term of this Agreement or at any time thereafter, except as required in the course of his/her provision of services to HACSB. All customer records or information, business records or information, files, records, documents, letters, notes, media lists, original artwork and similar items relating to the business of HACSB, whether prepared by Contractor or otherwise coming into his/her possession, shall remain the exclusive property of HACSB. Upon the termination of this Agreement, or whenever requested by HACSB, Contractor shall immediately deliver to HACSB all such property, information, and other items in his/her possession or under her control. Contractor further agrees that he/she will at all times preserve the confidential nature of his/her relationship to HACSB and of the services hereunder.

**14. Conflicts of Interest.** Contractor represents that he/she is free to enter into this Agreement and that this engagement does not violate the terms of any agreement between Contractor and any third party. During the term of this agreement, Contractor shall perform the required duties in a timely and productive manner. Contractor is expressly free to perform services for other parties while performing services for HACSB, as long as such provision of services does not impair Contractor's ability to perform his/her duties to HACSB or pose a conflict of interest or breach of confidentiality for HACSB, in HACSB's sole discretion.

**15. Independent Contractor.** This Agreement shall not render Contractor an employee, partner, agent of, or joint venture with HACSB for any purpose. Contractor is and will remain at all times an Independent Contractor in his/her relationship to HACSB. Contractor shall not be eligible for and shall have no claim against HACSB hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, tax liability or employee benefits of any kind.

**16. Taxes.** HACSB shall not be responsible for withholding taxes with respect to Contractor's compensation hereunder. As an independent contractor, Contractor shall be solely responsible for the payment of any and all taxes charged by any federal, state or local taxing authority as a result of Contractor's work performed or compensation paid pursuant to this Agreement. Contractor shall indemnify and hold harmless HACSB from any and all such tax liabilities.

**17. Licenses and Insurance.** As an independent contractor, Contractor shall be solely responsible for determining and obtaining all personal or business licenses necessary for him/her to lawfully and safely perform the duties contemplated hereunder, including without limitation business tax license and driver's license as needed.

Before the services can be rendered, the selected firm must provide proof of Insurance. Certificates of Insurance acceptable to HACSB must be submitted prior to commencement of any work. These certificates shall contain a provision that coverage afforded under the policies will not be cancelled unless thirty (30) day prior written notice has been given to HACSB. If the insurance described above is cancelled, HACSB reserves the right to terminate the contractual relationship upon thirty (30) days' notice. (Exhibit C)

**18. Choice of Law.** The laws of the state of California shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the parties hereto.

**19. Arbitration.** Any controversies arising out of this Agreement or its interpretation shall be resolved by arbitration in accordance with the provisions of the California Arbitration Act, section 1280 et seq. of the California Code of Civil Procedure. If the parties are unable to agree on a neutral arbitrator, then each party shall select one person, who shall then choose a third impartial arbitrator whose decision shall be final and conclusive on both parties. The parties shall share the fees and costs of arbitration on a 50/50 basis, except that each party shall bear its respective attorneys' fees and costs arising in any dispute under this Agreement. Venue for such arbitration shall be in Ventura County, California unless otherwise mutually agreed between the parties.

**20. Waiver.** Waiver by one party hereto or breach of any provision of this Agreement by the other shall not operate or be construed as a continuing waiver.

**21. Notices.** Any and all notices, demands, or other communications required or desired to be given hereunder by any party shall be in writing and shall be validly given or made to another party if personally served, or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. If such notice or demand is served personally, notice shall be deemed constructively made at the time of such personal service. If such notice, demand or other communication is given by mail, such notice shall be conclusively deemed given five days after deposit thereof in the United States mail addressed to the party to whom such notice, demand or other communication is to be given as follows:

If to Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to HACSB: xxxxxx  
995 Riverside Street  
Ventura, CA 93001  
Telephone: (805) 648-5008 ext. xxxxx

Any party hereto may change its address for purposes of this paragraph by written notice given in the manner provided above.

**22. Modification or Amendment.** No amendment, change or modification of this Agreement shall be valid unless it is in writing signed by the parties hereto.

**23. Attorneys' Fees and Costs.** In the event any dispute or claim arises out of this Agreement, the prevailing party shall be entitled to recover its reasonable fees and costs from the other party.

**23. Standard of Care.** The Contractor and its employees, subcontractors, and other persons or entities performing portions of the services for or on behalf of the Contractor, shall perform all services in a manner consistent with the standard of professional skill and care under California law, applicable to those who specialize in providing such services, under circumstance similar to that of the services which are the subject of this Agreement.

**24. Indemnification.** To the fullest extent permitted by law, Contractor shall indemnify, hold harmless, and at Owner's request defend, the Owner and its officers, directors, employees, and agents, from and against claims, liabilities, damages, losses, costs, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance

of the services, failure to perform the services or condition of the services, to the extent caused in whole or in part by the negligent acts or omissions of the Contractor, a subconsultant, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section. The provisions of this Section shall survive the expiration or termination of this Agreement.

**25. Ownership of Work Product.** All documents, reports, surveys, materials, architectural and engineering drawings, and specifications ("Work Product") developed or assembled by the Contractor in connection with this Agreement shall be the exclusive property of the Owner. The Owner shall own all of the right, title and interest, in and to the Work Product including without limitation, all trademarks, copyrights, trade secrets, patents, and any and all other intellectual property rights. The Owner shall have the unrestricted right to use and disclose the Work Product in any manner and for any purpose related to the Project without payment of further compensation to the Contractor. The Owner shall have the rights granted in this Section regardless of whether this Agreement is terminated early or Contractor fully performs its services under this Agreement. The Owner shall have access to the Work Product in whatever form at all times during the term of this Agreement. Any Work Product in the possession of the Contractor upon completion or termination of this Agreement shall be delivered to the Owner promptly upon payment to the Contractor for services rendered in accordance with this Agreement prior to termination or completion. Copies of the Work Product including reproducible copies may be retained by the Contractor but the Contractor warrants that the Work Product shall not be made available by the Contractor to any person or entity for use without the prior approval of the Owner other than in connection with the Project.

**26. Nondiscrimination.** There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability in the performance of this Agreement. Contractor will ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship; and provision of any services or accommodations to clients or the general public.

**27 Entire Understanding.** This document and any exhibit attached constitute the entire understanding and agreement of the parties, and any and all prior agreements, understandings, and representations are hereby terminated and canceled in their entirety and are of no further force and effect.

**28. Unenforceability of Provisions.** If any provision of this Agreement, or any portion thereof, is held to be invalid and unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.

**29. Knowing and Voluntary Execution.** HACSB and Contractor agree that each party has the authority to enter into this agreement, and that each party does so knowingly and voluntarily and with full understanding of its terms.

**IN WITNESS WHEREOF** the undersigned have executed this Agreement as of the date(s) reflected below. The parties hereto agree that facsimile signatures shall be as effective as if originals.

**Date:** \_\_\_\_\_ **Housing Authority of the City of San Buenaventura.**

\_\_\_\_\_  
**By: xxxxxxxxxxxxxxxx**  
**Its: xxxxxxxxxxxx**

**Date:** \_\_\_\_\_ \_\_\_\_\_

\_\_\_\_\_  
**By:**  
**Its:**

**Date:** \_\_\_\_\_ **Housing Authority of the City of San Buenaventura**

\_\_\_\_\_  
**As Approved Form: Christopher Beck, General Counsel**