

**REQUEST FOR PROPOSALS**

**PROJECT-BASED VOUCHERS FOR OFF-SITE  
BEECHER TERRACE REPLACEMENT HOUSING**

**PROPOSAL #1487**

**For**

**Louisville Metro Housing Authority  
420 South 8<sup>th</sup> Street  
Louisville, KY 40203**

**Lisa Osanka  
Executive Director and Contracting Officer**

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## REQUEST FOR PROPOSALS

### **PROJECT-BASED VOUCHERS FOR OFF-SITE BEECHER TERRACE REPLACEMENT HOUSING**

#### **Proposal #1487**

The Louisville Metro Housing Authority (LMHA) is requesting proposals to provide Project-Based Voucher (PBV) units in qualified rental housing in connection with the above referenced project. The rental housing must be located within the Russell neighborhood or in a non-impacted census tract in Jefferson County.

Interested parties should contact Heather Hairgrove at 502-569-3425 to receive an RFP booklet which contains all pertinent information and forms needed to submit a responsive proposal. Proposal booklets may also be obtained at the LMHA offices at 420 South 8<sup>th</sup> Street, Louisville, Kentucky 40203 or electronically at [www.lmha1.org](http://www.lmha1.org) under "Bid Opportunities." Offerors who obtain a proposal packet on-line should e-mail their contact information (including company name, address, project manager name, e-mail, phone, and fax) to [hairgrove@lmha1.org](mailto:hairgrove@lmha1.org) to receive notice of any addenda that might be issued to this RFP.

Proposals are due Tuesday, March 19, 2019 by 10:00 a.m. EST.

Address proposals to:

Attn: Steve Webb  
Louisville Metro Housing Authority  
3223 South Seventh Street Road  
Louisville, Kentucky 40216

LMHA reserves the right to accept or reject any or all proposals and/or waive any informalities in the procurement process. LMHA is an equal opportunity employer and is committed to affirmative action in the involvement of Minority Business Enterprises (MBE) to the maximum extent possible. LMHA encourages MBE firms or individuals to respond. Non-minority firms or individuals are requested to seek participation of minority businesses as sub-consultants or in partnership arrangements to the maximum extent possible.

## 1. PURPOSE

This Request for Proposal (“RFP”) for rental housing for Beecher Terrace off-site replacement housing is being issued by Louisville Metro Housing Authority (LMHA). The selected Owners<sup>1</sup> or Developers<sup>2</sup> (referred to throughout as Respondent) will contract directly with LMHA.

The purpose of the RFP is to select qualified rental housing. The selected rental housing will be eligible to receive Project-Based Voucher (PBV) Assistance<sup>3</sup> for a term of forty (40) years.

All 758 units currently on-site at Beecher Terrace will be replaced by 316 rental units on-site and 442 units off-site within Louisville Metro/Jefferson County by September 30, 2023. LMHA anticipates engaging and making awards to multiple Owners or Developers of high quality, energy efficient rental housing including appropriate amenities and, where applicable, supportive services.

LMHA will select PBV housing units through the following method:

### *Competitive Selection*

LMHA is inviting interested Respondents to participate in the PBV Program according to its customary procurement policy, which incorporates broad public notice of the opportunity, including publication of the public notice in the *Courier-Journal* and the *Louisville Defender*.

Respondents to this RFP must meet all [Threshold Requirements](#). Proposals that do not meet the Threshold Requirements will be disqualified from further consideration.

Proposals will be reviewed by the Evaluation Team made up of employees at the LMHA and Louisville Metro Government to determine if the project meets the Threshold Requirements. Projects meeting the Threshold Requirements will be evaluated and scored using the [Weighted Evaluation Criteria](#) set forth in section five of this RFP. The Evaluation Team will also conduct a site visit. After scoring and the site visits have been completed, proposals will be ranked in order. Recommendations for PBV awards will be made to the LMHA Board of Commissioners and selections will be made by a majority vote.

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<sup>1</sup> **Owner** is the individual or entity in ownership of a development of existing multifamily, rental housing units or the land on which such a development will be developed. Ownership of land shall include being the lessee under a long-term ground leasehold.

<sup>2</sup> **Developer** is the person or entity that is proposing to develop or is developing (i) a new, rental development or (ii) a rehabilitation of a rental property requiring rehabilitation, and who is qualified and interested in receiving PBVs for a percentage of the rental units, and who has or will acquire site control of the land on which the new rental housing will be built or the existing rental property will be rehabilitated.

<sup>3</sup> **Project Based Voucher (“PBV”) Assistance** is rental assistance awarded and funded by LMHA to reserve a specific number of PBV Units for eligible households in residential housing in accordance with the PBV Agreement. The terms and conditions of assistance are recorded in a Housing Assistance Payment (HAP) contract between LMHA and the Owner. See [24 CFR 983](#) for full details about the Project-Based Voucher program.

## 2. BACKGROUND & DESCRIPTION OF THE PROJECT

The Louisville Metro Housing Authority (LMHA) is a high-performing public housing authority, which has over 4,000 public housing units, and administers rental assistance to approximately 9,400 families through its voucher programs.

The U.S. Department of Housing and Urban Development (HUD) awarded LMHA a \$29,575,000 Choice Neighborhoods Initiative (CNI) Implementation Grant in December 2016 for the revitalization of the Beecher Terrace public housing development and a number of critical community improvements in the wider Russell neighborhood. All buildings on the current Beecher Terrace site will be razed and replaced with a vibrant, energy efficient, sustainable mixed-income, mixed-use community.

LMHA has committed to replacing all 758 units (1,317 bedrooms), ensuring that the same number of households residing at Beecher today will be housed post-revitalization. The CNI Transformation Plan calls for the construction of 316 replacement units on the existing Beecher Terrace footprint and the provision of 442 replacement units off-site.

	<b>1 BR</b>	<b>2 BR</b>	<b>3 BR</b>	<b>Total BRs</b>	<b>Total Units</b>
<b>On-Site</b>	154	108	54	532	316
<b>Off-Site</b>	201	139	102	785	442
<b>Total</b>	355	247	156	1,317	758

LMHA has designed a Local PBV Program that will be utilized as a strategic tool to provide replacement units for the Beecher Terrace housing project. Unlike a tenant-based voucher, which may transfer with the resident, a PBV during the contract term remains with the PBV rental community and is available only to households residing in a PBV assisted unit.

The Housing Authority's Local PBV Program has been designed with the following key objectives in mind:

- a. Supporting neighborhood revitalization, especially the transformation of the Russell neighborhood (which includes Beecher Terrace), by creating new housing choices that provide in-neighborhood relocation options for displaced LMHA residents and attract new residents to the neighborhood;
- b. Increasing housing choices for low-income families in high-opportunity areas;
- c. Providing options for low-income families to live in mixed-income and mixed-use developments; and
- d. Incentivizing developers to preserve or create affordable housing units that expand housing options for low-income families.

Projects must meet the following requirements:

- a. Replacement units must be located either in the targeted Russell neighborhood or in [non-impacted census tracts](#)<sup>4</sup>;
- b. Replacement units must be located in developments where no more than half of the units receive PBV assistance;<sup>5</sup> and
- c. Proposed PBV Units cannot currently be receiving [prohibited subsidy types](#).

### 3. IMPORTANT DATES

There will be a Pre-Proposal Conference at **10:00 a.m. EST on Tuesday, March 5, 2019** at LMHA's Purchasing Department located at 3223 South Seventh Street Road, Louisville, KY 40216.

Questions and/or comments regarding this RFP must be submitted in writing. All questions and/or comments must be received no later than **Tuesday, March 12, 2019**.

Submit questions and/or comments to:

Attn: Heather Hairgrove  
LMHA Special Projects Consultant  
Louisville Metro Housing Authority  
420 South 8<sup>th</sup> Street  
Louisville, Kentucky 40203

Inquiries can also be made via email to [Hairgrove@LMHA1.org](mailto:Hairgrove@LMHA1.org).

Answers will be provided as written addenda to this RFP, e-mailed to all firms who have requested the RFP and posted to LMHA's website.

LMHA will endeavor to provide copies of addenda to all potential Respondents that have acquired this RFP, but it will be the responsibility of each Respondent to make inquiry as to the existence and content of addenda, as the same shall become part of this RFP and all Respondents will be bound thereby, whether or not the addenda are actually received by the Respondent.

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<sup>4</sup> A "non-impacted census tract" is a census tract in which the poverty rate is greater than 40% and the minority concentration is greater than 20% higher than that for the Metropolitan Statistical Area (MSA) as a whole.

<sup>5</sup> Individual exceptions may be permitted if such exception would provide LMHA residents access to high-opportunity areas where housing might otherwise be unobtainable. Such exception would be at the sole discretion of LMHA and subject to HUD approval.

Proposals are due by **10:00 a.m. EST on Tuesday, March 19, 2019**. LMHA anticipates notifying Respondents of selection results based on the evaluation criteria identified herein by **Friday, May 31, 2019**.

Respondents are responsible for reading this RFP in its entirety, including any updates and revisions that may be included in any addenda. By submitting a response to this solicitation, the Respondent acknowledges that it has read the entire document and is responding with full knowledge of all terms, conditions and requirements set forth herein. If Respondent is awarded a Preliminary Award Letter pursuant to this RFP, such award is subject to agreement of contractual terms by LMHA and Respondent and compliance with applicable timelines.

#### **4. SCOPE OF WORK**

##### ***Location***

The CNI Program requires that replacement housing units be built either in the Russell neighborhood or in non-impacted census tracts. The boundaries of the Russell neighborhood are:

North: Market St.

East: 9<sup>th</sup> St.

South: Broadway

West: I-264

An interactive map identifying impacted, and non-impacted census tracts and the boundaries of the Russell neighborhood is located at <https://arcg.is/08a91b>.

##### ***Maximum PBV Award***

No more than 50% of units will be awarded PBV assistance. In addition, for the duration of the Housing Assistance Payment (HAP) contract, no more than 50% of the total units in the property may receive direct, ongoing operating subsidy.

On a case-by-case basis, an exception to the maximum PBV award may be permitted if such exception would provide LMHA residents access to high-opportunity areas where housing might otherwise be unobtainable. Such exception would be at the sole discretion of LMHA and subject to HUD approval. In this scenario, LMHA may award PBV assistance to more than 50% of units in a development with the final percentage of units to be awarded PBV assistance at the sole discretion of LMHA.

##### ***Income Restrictions***

Replacement units will be affordable to low-income families for a minimum of 40 years. Respondents must commit to provide a 40-year affordability restriction via legal documents.

The income eligibility limit for PBV units will be 80% of Area Median Income (AMI) except in the case of PBV units that are subject to a lower income restriction due to limitations imposed by other third-party funding sources (i.e., units that also have Low-Income Housing Tax Credits or funding awarded through the National Housing Trust Fund). In the case of funding sources that impose an income cap below 80% of AMI, the maximum allowable income cap will be used. (For example, PBV units that also have low-income housing tax credits capped at 60% of AMI, would have an income eligibility limit of 60% of AMI).<sup>6</sup> (See Attachment 6, 2019 Jefferson County Income Limits, for income limits.)

### ***Federal and State Accessibility Requirements - Section 504***

#### **New Construction of Housing Facilities**

If a project has five or more units under one contract/deed, then five percent of the total units or at least one unit in a multifamily housing project, whichever is greater, must be accessible to persons with mobility impairments. Two percent of the units (but not less than one unit) must be accessible to persons with visual and/or hearing impairments. Note: These accessible units must comply with Universal Federal Accessibility Standards. See [24 CFR 8.22](#).

#### **Alterations of Existing Housing Facilities**

If a project contains 15 or more units and the cost of the alterations is 75 percent or more of the replacement cost of the completed facility, then five percent of the total units or one unit must be accessible to persons with mobility impairments and two percent of the units or one unit must be accessible to persons with visual or hearing impairments. See [24 CFR 8.23](#).

#### **Fair Housing Design Requirements**

Housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at [24 CFR 100.205](#), as applicable.

#### **Building Codes**

Any application submitted for new construction, substantial rehabilitation/alterations to existing structures, or change in occupancy shall meet all applicable accessibility requirements of the Kentucky Building Codes and Metro Louisville Code supplements.

#### ***Broadband Infrastructure<sup>7</sup>***

Any new construction or substantial rehabilitation of a building with more than four rental units must include installation of broadband infrastructure. Broadband infrastructure includes cables, fiber optics, wiring, or other permanent (integral to the structure) infrastructure, including

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<sup>6</sup> MTW Activity #48-2018, Income Limits

<sup>7</sup> 24 CFR 983.157, "Broadband Infrastructure", 24 CFR 5.100, "Definitions"



wireless infrastructure, that is capable of providing access to Internet connections in individual housing units, and that meets the definition of “advanced telecommunications capability” determined by the Federal Communications Commission under section 706 of the Telecommunications Act of 1996 ([47 U.S.C. 1302](#)).

For the purpose of determining whether the installation of broadband infrastructure is required, the term “substantial rehabilitation” means work that involves:

- a. Significant work on the electrical system of the multifamily rental housing. “Significant work” means complete replacement of the electrical system or other work for which the pre-construction cost estimate is equal to or greater than 75% of the cost of replacing the entire electrical system. In the case of multifamily rental housing with multiple buildings with more than four units, “entire system” refers to the electrical system of the building undergoing rehabilitation; or
- b. Rehabilitation of the multifamily rental housing in which the preconstruction estimated cost of the rehabilitation is equal to or greater than 75% of the total estimated cost of replacing the multifamily rental housing after the rehabilitation is complete. In the case of multifamily rental housing with multiple buildings with more than four units, the replacement cost must be the replacement cost of the building undergoing rehabilitation.

The installation of broadband infrastructure is not required when the Owner determines and documents the determination that:

- a. The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible;
- b. The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or
- c. The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

### ***Occupancy Deadline***

All replacement housing must be available and online for occupancy by March 31, 2023.

### ***Selection Requirements***

All projects awarded PBV assistance must meet the standards enumerated in this section.<sup>8</sup>

- a. Single-Room Occupancy (SRO) Housing, Congregate Housing, Group Homes, Cooperative Housing, Shared Housing, Homeownership units, Manufactured Homes and Manufactured Home Space rental are not eligible for PBV assistance;

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<sup>8</sup> 24 CFR 983.53, “Prohibition of Assistance for Ineligible Units”

- b. Units on the grounds of a penal, reformatory, medical, mental, or similar public or private institution are not eligible for PBV assistance;
- c. Nursing homes and facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care are not eligible for PBV assistance;
- d. Assisted living facilities that provide home health care services such as nursing and therapy for residents of the housing are not eligible for PBV assistance;
- e. Units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students of the institution are not eligible for assistance;
- f. Public Housing Agencies are not permitted to attach or pay PBV assistance for a unit occupied by an Owner of the housing. A member of a Cooperative who owns shares in the project assisted under the PBV program shall not be considered an Owner for purposes of participation in the PBV program;
- g. Before a Public Housing Agency selects a specific unit to which assistance is to be attached, the Agency must determine whether the unit is occupied and, if occupied, whether the unit's occupants are eligible for assistance. The Agency must not select or enter into an Agreement to Enter into a Housing Assistance Payment Contract (AHAP) or a HAP contract for a unit occupied by a Family ineligible for participation in the PBV Program;
- h. Public Housing Agencies are not permitted to attach or pay PBV assistance for units for which construction or rehabilitation has commenced after proposal submission and prior to execution of an AHAP.

For the purpose of this determination, “construction” begins when excavation or site preparation (including clearing of the land) begins for the housing. “Rehabilitation” begins with the physical commencement of rehabilitation activity on the housing<sup>9</sup>;

- i. A PHA is not permitted to attach or pay PBV assistance to units in any of the following types of subsidized housing:<sup>10</sup>
  - 1) A public housing dwelling unit;
  - 2) A unit subsidized with any other form of Section 8 assistance (tenant-based or project-based);
  - 3) A unit subsidized with any governmental rent subsidy (a subsidy that pays all or any part of the rent);

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<sup>9</sup> 24 CFR 983.152, “Purpose and Content of the Agreement to Enter into HAP Contract”

<sup>10</sup> 24 CFR 983.54, “Prohibition of Assistance for Units in Subsidized Housing.” A unit may be receiving tenant-based assistance from any of the subsidized housing sources at the time of proposal submission. However, LMHA will not provide PBV assistance until such tenant-based assistance ceases.

- 4) A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
  - 5) A unit subsidized with Section 236 rental assistance payments ([12 U.S.C. 1715z-1](#)). However, the PHA may attach assistance to a unit subsidized with Section 236 interest reduction payments;
  - 6) A unit subsidized with rental assistance payments under Section 521 of the Housing Act of 1949, [42 U.S.C. 1490a](#) (a Rural Housing Service Program). However, the PHA may attach assistance for a unit subsidized with Section 515 interest reduction payments ([42 U.S.C. 1485](#));
  - 7) A [Section 202 project for non-elderly persons with disabilities](#) (assistance under Section 162 of the Housing and Community Development Act of 1987, 12 U.S.C. 1701q note);
  - 8) Section 811 project-based supportive housing for persons with disabilities ([42 U.S.C. 8013](#));
  - 9) Section 202 supportive housing for the elderly ([12 U.S.C. 1701q](#));
  - 10) A Section 101 rent supplement project ([12 U.S.C. 1701s](#));
  - 11) A unit subsidized with any form of tenant-based rental assistance (as defined at [24 CFR 982.1\(b\)\(2\)](#)) (e.g., a unit subsidized with tenant-based rental assistance under the HOME program, 42 U.S.C. 12701 *et seq.*); or
  - 12) A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or by the PHA in accordance with HUD requirements. For this purpose, “housing subsidy” does not include the housing component of a welfare payment; a social security payment; or a federal, state, or local tax concession (such as relief from local real property taxes).
- j. A Public Housing Agency may provide PBV assistance only in accordance with HUD subsidy layering regulations ([24 CFR 4.13](#)) and other requirements. The subsidy layering review is intended to prevent excessive public assistance for the housing by combining (layering) HAP subsidy under the PBV Program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits. The subsidy layering requirements are not applicable to existing housing. A further subsidy layering review is not required for housing selected as new construction or rehabilitation of housing, if HUD's designee has conducted a review, which included a review of PBV assistance, in accordance with HUD's PBV subsidy layering review guidelines.

A Public Housing Agency is not permitted to enter into an AHAP or a HAP contract until HUD or a housing credit agency approved by HUD has conducted any required subsidy

layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements.

The HAP contract must contain the Owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements<sup>11</sup>;

### **General Site Selection Standards**<sup>12</sup>

A Public Housing Agency may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an AHAP or a HAP contract for units on the site, unless the Agency has determined that:

- a. Project-based assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. This determination will be made in a manner consistent with the LMHA Housing Choice Voucher Program Administrative Plan (Attachment 3) and with the Housing Authority's Local Project- Based Voucher Program MTW activity #48-2018 (Attachment 4). In making this determination, the Housing Authority will consider the following factors:
  - 1) Whether a PBV development will be located in a census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition;
  - 2) Whether the census tract in which the proposed PBV development will be located is undergoing significant revitalization;
  - 3) Whether state, local, or federal dollars have been invested in the area that has assisted in the achievement of the statutory requirement;
  - 4) Whether new market rate units are being developed in the same census tract where the proposed PBV development will be located and the likelihood that such market rate units will positively impact the poverty rate in the area;
  - 5) If the poverty rate in the area where the proposed PBV development will be located is greater than 20%, LMHA will consider whether in the past five years there has been an overall decline in the poverty rate;
  - 6) Whether there are meaningful opportunities for educational and economic advancement in the census tract where the proposed PBV development will be located.

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<sup>11</sup> 24 CFR 983.55, "Prohibition of Excess Public Assistance"

<sup>12</sup> 24 CFR 983.57(b), "Compliance with PBV Goals, Civil Rights Requirements, and HQS "

- b. The site is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964 ([42 U.S.C. 2000d-2000d\(4\)](#)) and HUD's implementing regulations at [24 CFR part 1](#); Title VIII of the Civil Rights Act of 1968 ([42 U.S.C. 3601-3629](#)); and HUD's implementing regulations at [24 CFR parts 100 through 199](#); [Executive Order 11063](#) (27 FR 11527; 3 CFR, 1959-1963 Comp., p. 652) and HUD's implementing regulations at [24 CFR part 107](#). The site must meet the section 504 site selection requirements described in [24 CFR 8.4\(b\)\(5\)](#).
- c. The site meets the HQS site standards at [24 CFR 982.401](#).

**Site Selection Standards Applicable Only to Existing Housing and Rehabilitated PBV Housing.<sup>13</sup>**

A site for existing or rehabilitated housing must meet the following site and neighborhood standards. The site must:

- a. Be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities and streets must be available to service the site. (The existence of a private disposal system and private sanitary water supply for the site, approved in accordance with law, may be considered adequate utilities.);
- b. Promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- c. Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents; and
- d. Be so located that travel time and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers is not excessive. While it is important that housing for the elderly not be totally isolated from employment opportunities, this requirement need not be adhered to rigidly for such projects.

**Site Selection Standards Applicable Only to Newly Constructed PBV Housing.<sup>14</sup>**

A site for newly constructed housing must meet the following site and neighborhood standards:

- a. The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the site.

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<sup>13</sup> 24 CFR 983.57(d), "Existing and Rehabilitated Housing Site and Neighborhood Standards"

<sup>14</sup> 24 CFR 983.57(e), "New Construction Site and Neighborhood Standards"

- b. The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.
- c. The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.
- d. The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.
- e. Except for new construction, housing designed for elderly persons, travel time, and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower- income workers, must not be excessive;

### *Contractual Requirements*

#### **Agreement to Enter into a Housing Assistance Payments Contract (AHAP)<sup>15</sup>**

New Construction projects and projects proposing rehabilitation will first enter into an AHAP Contract. The AHAP is the HUD-approved legal instrument through which the Owner agrees to develop the contract units to comply with the Housing Authority’s criteria for decent, safe, and sanitary units, and LMHA agrees that, upon timely completion of such development in accordance with the terms of the AHAP, the Housing Authority will enter into the HAP contract with the Owner for the contract units.

LMHA will not enter into an AHAP if construction or rehabilitation has commenced after proposal submission but before execution of the AHAP. For the purpose of this determination, “construction” begins when excavation or site preparation (including clearing of the land) begins for the housing. “Rehabilitation” begins with the physical commencement of rehabilitation activity on the housing.

LMHA will not enter into an AHAP until both the subsidy layering, and environmental reviews are completed, and the Housing Authority has received the environmental approval.<sup>16</sup>

Any required LMHA criteria for decent, safe, and sanitary housing that exceed HUD’s Housing Quality Standards will be specified in the AHAP.

#### **Housing Assistance Payment Contract (HAP)**

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<sup>15</sup> 24 CFR 983.152, “Purpose and Content of the Agreement to Enter into HAP Contract”

<sup>16</sup> 24 CFR 983.153, “When Agreement Is Executed”

All projects will enter into a HAP contract when the units are ready for occupancy. LMHA anticipates HAP contracts will have a cumulative term of 40 years with an initial term of 20 years and an extension at the time of the initial HAP contract for an additional term of 20 years.

### **Environmental Review**

LMHA will not enter into an AHAP or HAP contract with an owner, and the Housing Authority, the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities under this part, until one of the following occurs:

- a. The responsible entity has completed the environmental review procedures required by [24 CFR part 58](#), and HUD has approved the environmental certification and HUD has given a release of funds. For the purpose of environmental review, a “release of funds” means that HUD has approved the Housing Authority’s Request for Release of Funds and Certification by issuing a Letter to Proceed (in lieu of using form [HUD-7015.16](#)) that authorizes LMHA to execute an AHAP or, for existing housing, to directly enter into a HAP contract with an Owner of units selected under the PBV Program; or
- b. The responsible entity has determined that the project to be assisted is exempt under [24 CFR 58.34](#) or is categorically excluded and not subject to compliance with environmental laws under [24 CFR 58.35\(b\)](#); or
- c. HUD has performed an environmental review under [24 CFR part 50](#) and has notified LMHA in writing of environmental approval of the site.

HUD will not approve the release of funds for PBV assistance if LMHA, the owner, or any other party commits funds (*i.e.*, enters an Agreement or HAP contract or otherwise incurs any costs or expenditures to be paid or reimbursed with such funds) before the Housing Authority submits and HUD approves its request for release of funds (where such submission is required).

LMHA will oblige the owner to carry out mitigating measures required as a result of the environmental review.

### ***Regulatory Compliance***

#### **Eligibility to Participate in Federal Programs and Activities**

The AHAP and HAP contracts shall include a certification by the Owner that the Owner and other project principals (including the officers and principal members, shareholders, investors, and other parties having a substantial interest in the project) are not on the U.S. General Services Administration list of parties excluded from federal procurement and non-procurement programs.

#### **Disclosure of Conflict of Interest**

The Owner must disclose any possible conflict of interest that would be a violation of the AHAP, the HAP contract, or HUD regulations.

### ***Federal Requirements***

With the exception of regulatory waivers provided through LMHA's HUD-approved Local Project-Based Voucher Program, as described in MTW Activity #48-2018 (Attachment 4) and MTW Activity #51-2019 (Attachment 5), all projects must be selected developed, and operated in accordance with the following:

- a. [PBV Regulations found at 24 CFR part 983](#);
- b. [PIH Notice 2017-21 Implementation Guidance: Housing Opportunity Through Modernization Act of 2016 \(HOTMA\) – Housing Choice Voucher \(HCV\) and Project-Based Voucher \(PBV\) Provisions](#);
- c. [Subsidy Layering Reviews Administrative Guidance \(79 FR 57955; September 26, 2014\)](#);
- d. [Davis-Bacon Labor Requirements \(80 FR 12511; March 9, 2015\)](#); and
- e. LMHA Housing Choice Voucher (HCV) Program Administrative Plan, Section 17: Project-Based Assistance (Attachment 3).

### **Additional Federal Provisions**

In addition, the following provisions apply:

- a. **Civil money penalty.** Penalty for owner breach of HAP contract. See [24 CFR 30.68](#).
- b. **Debarment.** Prohibition on use of debarred, suspended, or ineligible contractors. See [24 CFR 5.105 \(c\)](#) and [2 CFR part 2424](#).
- c. **Definitions.** See [24 CFR part 5, subpart D](#).
- d. **Disclosure and verification of income information.** See [24 CFR part 5, subpart B](#).
- e. **Environmental review.** See 24 CFR parts [50](#) and [58](#) (see also provisions on PBV environmental review at [24 CFR 983.58](#)).
- f. **Fair housing.** Nondiscrimination and equal opportunity. See [24 CFR 5.105\(a\)](#) and [section 504 of the Rehabilitation Act](#).
- g. **Fair market rents.** See [24 CFR part 888, subpart A](#).
- h. **Fraud.** See [24 CFR part 792](#), PHA retention of recovered funds.



- i. **Funds.** See [24 CFR part 791](#), HUD allocation of voucher funds.
- j. **Income and family payment.** See [24 CFR part 5, subpart F](#) (especially [§ 5.603](#), definitions; [§ 5.609](#), annual income; [§ 5.611](#), adjusted income; [§ 5.628](#), total tenant payment; [§ 5.630](#), minimum rent; [§ 5.632](#), utility reimbursements; [§ 5.634](#), tenant rent; and [§ 5.661](#), section 8 project-based assistance programs: approval for police or other security personnel to live in project).
- k. **Labor standards.** Regulations implementing the Davis-Bacon Act, Contract Work Hours and Safety Standards Act ([40 U.S.C. 3701- 3708](#)), [29 CFR part 5](#), and other federal laws and regulations pertaining to labor standards applicable to development (including rehabilitation) of a project comprising nine or more assisted units.
- l. **Lead-based paint.** Regulations implementing the Lead-based Paint Poisoning Prevention Act ([42 U.S.C.4821- 4846](#)) and the Residential Lead-based Paint Hazard Reduction Act of 1992 ([42 U.S.C. 4851- 4856](#)). See [24 CFR part 35, subparts A, B, H, and R](#).
- m. **Lobbying restriction.** Restrictions on use of funds for lobbying. See [24 CFR 5.105\(b\)](#).
- n. **Noncitizens.** Restrictions on assistance. See [24 CFR part 5, subpart E](#).
- o. **Program accessibility.** Regulations implementing Section 504 of the Rehabilitation Act of 1973 ([29 U.S.C. 794](#)). See 24 CFR parts [8](#) and [9](#).
- p. **Protection for victims of domestic violence, dating violence, sexual assault, or stalking.** See [24 CFR part 5, subpart L](#) (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking). For purposes of compliance with HUD's regulations in 24 CFR part 5, subpart L, the covered housing provider is the PHA or owner, as applicable given the responsibilities of the covered housing provider as set forth in 24 CFR part 5, subpart L.
- q. **Relocation assistance.** Regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) ([42 U.S.C. 4201- 4655](#)). See [49 CFR part 24](#).
- r. **Section 3 - Training, employment, and contracting opportunities in development.** Regulations implementing Section 3 of the Housing and Urban Development Act of 1968 ([12 U.S.C. 1701u](#)). See [24 CFR part 135](#).
- s. **Uniform financial reporting standards.** See [24 CFR part 5, subpart H](#).
- t. **Waiver of HUD rules.** See [24 CFR 5.110](#).

## 5. EVALUATION CRITERIA

The proposal must pass all of the threshold requirements below to be considered for a PBV award.

<b>THRESHOLD REQUIREMENTS</b>	<b>PASS/FAIL</b>
The proposed development is located in the Russell neighborhood or a non-impacted census tract located within Jefferson County.	Pass/Fail
Households to receive PBV Assistance will not have an annual income exceeding 80% AMI.	Pass/Fail
New Construction projects or projects undergoing substantial rehabilitation will meet federal and state accessibility requirements, if applicable.	Pass/Fail
New Construction projects, or projects undergoing substantial rehabilitation will include the installation of broadband infrastructure unless justification for an exception has been provided.	Pass/Fail
Units will be available for occupancy by March 31, 2023.	Pass/Fail
The project meets/will meet the required site and neighborhood standards.	Pass/Fail
The project is financially feasible.	Pass/Fail
If relocation is necessary, the Relocation Plan is acceptable.	Pass/Fail

The maximum points that shall be awarded for each of the Evaluation Factors are detailed and described below.

<b>WEIGHTED EVALUATION CRITERIA</b>	<b>MAXIMUM POINTS</b>
Area of Opportunity	20
Deconcentration of Poverty and Expansion of Opportunities	20
Development Team Experience	20
Management Team Experience	20
Ready to Proceed	20
<b>TOTAL POINTS POSSIBLE</b>	<b>100</b>

***Area of Opportunity – Maximum Points = 20***

A high scoring proposal will be located in close proximity to public transportation, an employment center with 10,000 jobs or more and services. Services include gas stations, restaurants, banks, clothing retail, hardware stores, auto repair garages, home goods retail, bookstores, coffee shops, bike shops, dry cleaners, medical and dental offices, and grocery stores.

***Deconcentration of Poverty and Expansion of Opportunities – Maximum Points = 20***

A high scoring proposal will be consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. In making this determination, the Evaluation Team will consider the following factors:

- a. Whether the proposed project will be located in a census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition;

- b. Whether the census tract in which the proposed project will be located is undergoing significant revitalization;
- c. Whether state, local, or federal dollars have been invested in the area that has assisted in the achievement of the statutory requirement;
- d. Whether new market rate units are being developed in the same census tract where the proposed project will be located and the likelihood that such market rate units will positively impact the poverty rate in the area;
- e. If the poverty rate in the area where the proposed project will be located is greater than 20%, LMHA will consider whether in the past five years there has been an overall decline in the poverty rate;
- f. Whether there are meaningful opportunities for educational and economic advancement in the census tract where the proposed project will be located.

***Development Team Experience – Maximum Points = 20***

The Evaluation Team will review the relevant previous experience and qualifications of the Respondent in owning or developing rental housing. The Respondent (individual, corporation or, in the case of a limited partnership, the general partner(s) of the ownership entity) must demonstrate prior ownership experience in rental housing projects.

A high scoring proposal must demonstrate that the Respondent has either directly or through its team assembled all of the personnel, skills and other resources needed to complete the proposed project. This can be evidenced by referencing projects of similar scale, budget and complexity.

The Evaluation Team will consider the following:

- a. Respondent has demonstrated at least three continuous years of prior ownership experience in at least three rental housing projects of similar size (number of dwelling units) to the proposed project.
- b. Respondent has not experienced a foreclosure or bankruptcy in the last three years.
- c. Respondent does not have any unresolved compliance agency audit findings.

***Management Team Experience – Maximum Points = 20***

The Evaluation Team will evaluate the experience and capabilities of the Management Team in managing affordable, rental properties.

A high scoring proposal will be consistent with the following:

- a. The Management Team has demonstrated prior experience in the management of at least

three affordable rental housing properties of similar size (number of dwelling units) and scope to the proposed project over the last five years.

- b. The Management Team has experience managing rental housing properties receiving government subsidy.

***Ready to Proceed – Maximum Points = 20***

A high scoring proposal will demonstrate that it is ready to proceed within six months or less.

The following will be evaluated:

- a. Evidence of Respondent’s site control of the development or the land on which a proposed project is to be developed;
- b. Evidence that the property is appropriately zoned for the intended use;
- c. Evidence that utilities are available to the site; and
- d. All funding sources are secure and commitment letters are provided.

**6. SUBMITTAL REQUIREMENTS**

Proposals shall be submitted in original and four (4) paper copies, as well as one (1) PDF version on flash drive prepared in the format and detailed as outlined below, to enable the Authority to make a thorough evaluation.

Proposals shall be submitted in sealed envelopes and marked “**Project-Based Vouchers for Off-Site Beecher Terrace Replacement Housing - Proposal #1487.**” Proposals are due **Tuesday, March 19, 2019 by 10:00 a.m. EST.**

Proposals are to be submitted either by mail or delivery to the following location:

Attn: Steve Webb  
Louisville Metro Housing Authority  
3223 South Seventh Street Road  
Louisville, Kentucky 40216

Faxed or e-mailed proposals will not be accepted. All proposals must be valid for sixty (60) days.

The hard copy materials must include a table of contents and be organized into three ring binders or bound by another method and divided by labeled tabs to clearly note the contents of each section.

Proposals should be organized as follows:

***Tab 1 – Summary Page***

Include the Summary Page (Exhibit A).

***Tab 2 - Cover Letter***

The letter should identify the key players and highlight the Respondent’s qualifications. Please include an acknowledgement of any amendment(s) to this RFP. The Respondent’s failure to acknowledge an amendment may result in rejection of the proposal.

***Tab 3 –Application***

Complete and include the Application (Exhibit B).

***Tab 4 - Construction Design***

- a. Plans and Specifications – (Only applicable if construction or rehabilitation has not been completed.) Include a description of project work plans such as site/unit plans and elevations.
- b. Photos/Floorplans - (Only applicable if construction or rehabilitation is complete or not proposed.) Include exterior/interior photos and floorplans.

***Tab 5 - Davis-Bacon (if applicable)***

Include a certification that the project is in compliance with Davis-Bacon Wage rates if nine (9) or more units are proposed for development.

***Tab 6 - Financial Proforma***

Include a 15-year proforma illustrating proposed rents for PBV units. The proforma should include line item detail sufficient for a knowledgeable reviewer to evaluate the feasibility and completeness of the budget including, but not limited to:

- a. Estimated revenue; and
- b. Estimated expenses for all categories including maintenance, utilities, capital reserves, security, resident supportive services, insurance, taxes, etc.

Footnotes or other narrative must be presented where necessary to clarify assumptions about sources and uses.

***Tab 7 - Commitment Letters***

Include commitment letters for all secured funding.

***Tab 8 - Development Schedule***

Include a project timeline indicating major milestones including closings and when project units will be ready for occupancy.

***Tab 9 - Relocation Plan (if units are currently occupied)***

Any person displaced due to the conversion of any housing unit to PBV must be provided relocation assistance at the levels described in, and in accordance with, the requirements of the [Uniform Relocation Assistance and Real Property Acquisition Policies Act](#) (“URA”). The cost of the required relocation shall be the responsibility of the Respondent.

Respondents that anticipate or require relocation of existing tenants or businesses will be accepted only with a relocation plan (including a sufficient budget), and an explanation of efforts planned by the Respondent to mitigate the impact of the displacement that, in the opinion of LMHA, meets the requirements of the Uniform Relocation Act and any other applicable laws.

Respondent must identify the funding sources that will be used to finance the relocation costs, separate and apart from LMHA. The budget for relocation and source of funds must be included as part of the relocation plan. LMHA will not allow displacement of tenants, if avoidable. Respondents must include all documentation required in the Relocation Plan at the time of application. LMHA will review the development budget to ensure that a sufficient allocation has been included for relocation expenditures.

***Tab 10 - Legal Factors***

Include a list of outstanding lawsuits involving key players including claims, both settled and unsettled for the past five (5) years.

**7. SELECTION PROCESS**

The Selection Process will be completed as follows:

- a. Proposals will be reviewed by the Evaluation Team made up of employees at the LMHA and Louisville Metro Government to determine if the project meets the Threshold Requirements.
- b. Projects meeting the Threshold Requirements will be evaluated and scored using the Weighted Evaluation Criteria set forth in section five of this RFP. (The Evaluation Team reserves the right to contact respondents with questions if clarification is needed in order to accurately score the Project Proposal.)

- c. The Evaluation Team will conduct a site visit.
- d. After scoring and site visits have been completed, proposals will be ranked in order.
- e. Recommendations for PBV awards will be made to the LMHA Board of Commissioners Tuesday, May 21, 2019.
- f. The LMHA Board of Commissioners will make selections by a majority vote.
- g. LMHA will notify the respondents of the results by telephone and email no later than Friday, May 31, 2019.
- h. Awards will be published in the *Courier-Journal* and the *Louisville Defender* on or about the same time as the selected respondents are notified.
- i. A Preliminary Award Letter stating applicable conditions and timeframes to enter into an AHAP/HAP Contract will be issued within 30 days of the LMHA Board of Commissioners meeting.

## 8. SCHEDULE OF EVENTS

The following Schedule of Events represents LMHA’s estimate of the timetable that will be followed in connection with this RFP:

EVENTS	TIMEFRAME
RFP Posted on LMHA’s website, <i>Courier-Journal</i> and <i>Louisville Defender</i>	<b>Wednesday, February 27, 2019</b>
Pre-Proposal Conference	<b>Tuesday, March 5, 2019, 10:00 a.m. EST</b> at LMHA’s Purchasing Department located at 3223 S. Seventh St. Rd., Louisville KY 40216.
Deadline for Questions and/or Comments	<b>Tuesday, March 12, 2019.</b> LMHA will issue one addendum to address and respond to appropriate questions (if any). Answers will be provided as written addenda to this RFP, emailed to all respondents who have requested the RFP and posted to LMHA’s website. Any questions or comments received after the specified deadline will not be considered.
Proposal Deadline	<b>Tuesday, March 19, 2019, 10:00 a.m. EST.</b>

LMHA Board of Commissioners Approval	<b>Tuesday, May 21, 2019, 3:30 p.m. EST</b>
Notification to Respondent	<b>Friday, May 31, 2019</b>
Preliminary Award Letter	<b>Thursday, June 20, 2019</b>

LMHA reserves the right, at its sole discretion, to adjust this Schedule of Events as it deems necessary. If necessary, LMHA will communicate adjustments to the Schedule of Events through an addendum to this RFP. Addenda to this RFP will be issued and posted on LMHA's website under [Bid Opportunities](#) and emailed to all Respondents who have requested this RFP. To receive notification of any addenda, please forward contact information to Heather Hairgrove at [Hairgrove@LMHA1.org](mailto:Hairgrove@LMHA1.org).



**Exhibit A**  
**Summary Page**

**SUMMARY PAGE IS A FILLABLE PDF.**

**Competitive Award of Project-Based Vouchers  
Summary Page**

Project Name

Project Address

Owner Legal Entity Name (If not yet formed, identify the to-be-formed legal entity name.)

Contact Person and Title

Contact Mailing Address

Contact Phone and Email

Tax I.D. Number

Construction Type

New Construction

Minor Rehabilitation

Substantial Rehabilitation

Existing – No Rehabilitation

Total Number of Units

Requested Number of Project-Based Voucher Units

Census Tract

Projected Date of Completion

**Exhibit B**  
**Application**

**Louisville Metro Housing Authority  
Competitive Application for Project-Based Voucher Assistance**

**1. Unit Distribution**

Complete the unit distribution chart below for all units in the project.

**Note:** LMHA has established Local PBV Payment Standards that are equal to the greater of 110% of the Metropolitan Area Fair Market Rent (MAFMR) or 110% of the Small Area Fair Market Rent (SAFMR) schedules published annually by HUD (Attachment 7).

In addition, LMHA will allow the use of either the LMHA Utility Allowance Schedule (Attachment 8), or site-specific utility allowances calculated in accordance with the HUD Multifamily program requirements at Notice H 2015-04: Methodology for Completing a Multifamily Housing Utility Analysis (Attachment 9).

# of Bedrooms	# of Baths	# of Units	Project-Based Voucher Unit Y/N	Area Median Income	Proposed Contract Rent	Utility Allowance	Proposed Gross Rent
Total Units							

If minor or substantial rehabilitation, or existing with no-rehabilitation, tell us the total number of units currently occupied.

**2. Utilities**

Complete the utility chart below.

Utility	Utility Fuel Source	Utilities Paid by Owner or Tenant	Allowance for Utilities Paid by Tenant Only		
			1 BR	2 BR	3 BR
<b>Cooking</b>					
<b>Other, Lighting</b>	Electric				
<b>Hot Water</b>					
<b>Water</b>					
<b>Heating</b>					
<b>Air Conditioning</b>	Electric				
<b>Sewer</b>					
<b>Trash Collection</b>					
<b>TOTAL</b>					

**3. Unit Amenities (Select all that Apply)**

Microwave	Common On-Site Laundry	Clubhouse
Range/Oven	Ceiling Fans	Playground
Refrigerator	Fireplace	Dog Park
Dishwasher	Help/Call System	Community Center
Garbage Disposal	Security Alarm	Garage/Covered Parking
W/D Hookup	Blinds/Drapes	Porches/Decks
W/D Equipment	Computer Lab	Other (Please Specify)

**4. Target Population (Select all that Apply)**

Elderly	Physically Disabled
Single Parent	Veterans
Family	Drug/Alcohol Addicted
Homeless	Severe Mental Illness
Victims of Domestic Violence	Other (Please Specify)

**5. Supportive Services**

If applicable, describe any supportive services that will be provided to tenants.

**6. Site Control and Zoning and Acreage**

Briefly explain the status of the site control.

Number of Buildings	Scattered Site	Yes	No
Total Acreage of Proposed Site	Zoning Density (Units Per Acre)		
Zoning Category	Zoning Approved	Yes	No

If the zoning has not been approved, please explain the status and include an estimate of when zoning approval will be secured.

**7. Public Utilities/Services Available to the Site (Select all that Apply)**

Water

Sewer

Gas

Electricity

Streets

Private/Sanitary Water Supply

Other (Please Specify)

If access to public utilities/services will be delayed, briefly explain.



**10. Housing Accessibility for Persons with Disabilities**

Does the site must meet the section 504 site selection requirements described in 24 CFR 8.4(b)(5)?

Yes No

Does the site meet the HQS site standards at 24 CFR 982.401(l)?

Yes No

***New Construction***

If the project has five or more units under one contract/deed, are five percent of the total units or at least one unit, whichever is greater, accessible to persons with mobility impairments?

Yes No N/A

If the project has five or more units under one contract/deed, are at least two percent of the units (but not less than one unit) accessible to persons with visual and/or hearing impairments?

Yes No N/A

***Existing Construction***

If the project contains 15 or more units and the cost of the alterations is 75% or more of the replacement cost of the completed facility, are at least 5% of the total units or one unit accessible to persons with mobility impairments and 2% of the units or one unit accessible to persons with visual or hearing impairments?

Yes No N/A

If proposing substantial rehabilitation, was the housing first occupied after March 13, 1991?

Yes No N/A

If yes, does the design and construction comply with the requirements of the Fair Housing Amendment Act of 1988 and implementing regulations at 24 CFR 100.205, as applicable?

Yes No N/A



**11. Location Amenities**

Amenity	Proximity to Development Measured in Miles	Business Name(s)
Gas Stations		
Shopping		
Grocery Stores		
Restaurants		
Medical/Dental Facilities		
Banks		
Other		

**12. Transportation and Employment**

Is the project located on a TARC transit line? Yes                      No

Is the nearest TARC transit line a high frequency transit line (4, 18, or 23)? Yes                      No

Is the project located in close proximity to an employment center?  
(See Attachment 2) Yes                      No

Briefly explain the nearby job opportunities.

### 13. Development Team

List the members of the Development Team.

<b>Title</b>	<b>Name</b>	<b>Organization</b>
Principal #1		
Principal #2		
Principal #3		
Principal #4		
General Partner		
Architect		
General Contractor		
Management Agent		
Service Provider		

List and briefly describe three projects within the last ten years that exhibit the Respondent's experience most relevant to this RFP.

Has any member of the development team ever been debarred by HUD or any state housing finance agency?

Yes No

In the last 5 years, has any member of the development team or any entity in which a member of the development team has an identity of interest received an award of funds and/or housing credits which have been recaptured or in which the development was not completed?

Yes No

Have any members of the development team been subject to any disciplinary action, past or pending, by any administrative, governmental or regulatory body?

Yes No

Has any member of the development team been a party to a bankruptcy, been in receivership or adjudicated as bankrupt?

Yes No

Does the Applicant or other owners, officers, partners, and guarantors, and any affiliates, sister organizations or other businesses, whether for-profit or non-profit have any unresolved violations under Louisville Metro Government’s Property Maintenance Code on any properties owned by said individuals or organizations?

Yes No

If the answer to any of the previous questions is “yes”, please explain.

Is the Respondent in good standing with the Louisville Metro Human Relations Commission?

Yes No

Are the Principals of the Development Team in good standing with the Louisville Metro Revenue Commission?

Yes

No

If the answer to either of the above questions is “no”, please explain.

#### **14. Management Agent**

List and briefly describe three projects within the last ten years that exhibit the Management Team’s experience managing properties that have been funded with federal, state or local affordable housing financing.

Upon request, LMHA may allow owner-maintained site-based waiting lists. LMHA will determine whether to allow owner-maintained, site-based waiting lists based on LMHA’s assessment of each individual owner’s management capacity. Owners will be required to adhere to fair housing, Americans with Disabilities Act and other applicable federal guidelines including, but not limited to providing public notification of waiting list opening and closings; providing community-wide notice of housing availability; providing reasonable accommodations; and conducting the application process in compliance with LMHA’s Language Access Plan. Subject to LMHA approval, tenant selection preferences may be adopted for individual projects in accordance with LMHA’s Administrative Plan; however, post revitalization, relocated Beecher Terrace households will continue to receive a lifetime admission preference for all units designated as Beecher Terrace replacement units. Owners will forward applications nearing the top of the waiting list to LMHA, and LMHA will continue to maintain

responsibility for eligibility determination (Attachment 5).

Would the Respondent like to request LMHA's consideration to allow an owner-maintained, site-based waiting list?

Yes

No

If yes, please explain the Management Team's experience managing properties with PBVs or other operating subsidy.

**15. Funding Requests/Status of Funding (If New Construction or Rehabilitation)**

Please explain the source and status of funding. Include funding timelines along with any required deed restrictions.

**16. Subsidy Layering Review**

Has HUD, or a housing credit agency approved by HUD, conducted a subsidy layering review which included a review of PBV assistance in accordance with HUD's PBV subsidy layering review guidelines?

Yes

No

**17. Prohibited Assistance**

Is the proposed development shared housing, homeownership units or manufactured home space rental?

Yes

No

Is the proposed development located on the grounds of a penal, reformatory, medical, mental, or similar public or private institution?

Yes No

Is the proposed development a nursing home or facility providing continuous psychiatric, medical, nursing services, board and care, or intermediate care?

Yes No

Is the proposed development owned or controlled by an educational institution or its affiliate and designated for occupancy by students of the institution?

Yes No

Will an owner of the proposed development occupy one or more of the units?

Yes No

If new construction, has excavation or site preparation (including clearing of the land) begun?

Yes No

If substantial rehabilitation, has physical commencement of rehabilitation begun?

Yes No

Is the proposed development receiving subsidy from any of the sources listed below?

Public Housing; Yes No

Any form of Section 8 Assistance (tenant-based or project-based); Yes No

Any governmental rent subsidy that covers all or any part of the rent; Yes No

A unit subsidized with Section 236 rental assistance payments; Yes No

A unit subsidized with rental assistance payments under Section 521 of the Housing Act of 1949;  
Yes No

A Section 202 project for non-elderly persons with disabilities (assistance under Section 162 of the Housing and Community Development Act of 1987); Yes No

Section 811 project-based supportive housing for persons with disabilities;  
Yes No



**Exhibit C**  
**General Conditions**  
**HUD-5370**  
**HUD-5370C Section 1**  
**HUD-5370 C Section 2**  
**HUD-5370EZ**



# General Conditions for Construction Contracts - Public Housing Programs

U.S. Department of Housing and Urban Development  
Office of Public and Indian Housing  
OMB Approval No. 2577-0157 (exp. 3/31/2020)

**Applicability. This form is applicable to any construction/development contract greater than \$150,000.**

This form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 2 CFR 200, and those requirements set forth in Section 3 of the Housing and Urban Development Act of 1968 and its amendment by the Housing and Community Development Act of 1992, implemented by HUD at 24 CFR Part 135. The form is required for construction contracts awarded by Public Housing Agencies (PHAs).

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

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

The information requested does not lend itself to confidentiality.

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

Clause		Page	Clause		Page
1.	Definitions	2	<b>Administrative Requirements</b>		
2.	Contractor's Responsibility for Work	2	25.	Contract Period	9
3.	Architect's Duties, Responsibilities and Authority	2	26.	Order of Precedence	9
4.	Other Contracts	3	27.	Payments	9
<b>Construction Requirements</b>			28.	Contract Modifications	10
5.	Preconstruction Conference and Notice to Proceed	3	29.	Changes	10
6.	Construction Progress Schedule	3	30.	Suspension of Work	11
7.	Site Investigation and Conditions Affecting the Work	3	31.	Disputes	11
8.	Differing Site Conditions	4	32.	Default	11
9.	Specifications and Drawings for Construction	4	33.	Liquidated	12
10.	As-Built Drawings	5	34.	Termination of Convenience	12
11.	Material and Workmanship	5	35.	Assignment of Contract	12
12.	Permits and Codes	5	36.	Insurance	12
13.	Health, Safety, and Accident Prevention	6	37.	Subcontracts	13
14.	Temporary Buildings and Transportation Materials	6	38.	Subcontracting with Small and Minority Firms, Women's Business Enterprise, and Labor Surplus Area Firms	13
15.	Availability and Use of Utility Services	6	39.	Equal Employment Opportunity	13
16.	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements	6	40.	Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968	14
17.	Temporary Buildings and Transportation Materials	7	41.	Interest of Members of Congress	15
18.	Clean Air and Water	7	42.	Interest of Members, Officers, or Employees and Former Members, Officers, or Employees	15
19.	Energy Efficiency	7	43.	Limitations on Payments Made to Influence	15
20.	Inspection and Acceptance of Construction	7	44.	Royalties and Patents	15
21.	Use and Possession Prior to	8	45.	Examination and Retention of Contractor's Records	15
22.	Warranty of Title	8	46.	Labor Standards-Davis-Bacon and Related Acts	15
23.	Warranty of	8	47.	Non-Federal Prevailing Wage Rates	19
24.	Prohibition Against	9	48.	Procurement of Recovered	19

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## 1. Definitions

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

## 3. Architect's Duties, Responsibilities, and Authority

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

## 2. Contractor's Responsibility for Work

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

#### 4. Other Contracts

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

### Construction Requirements

#### 5. Pre-construction Conference and Notice to Proceed

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

#### 6. Construction Progress Schedule

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

#### 7. Site Investigation and Conditions Affecting the Work

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

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

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

### 8. Differing Site Conditions

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

### 9. Specifications and Drawings for Construction

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

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

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

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

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

#### 10. As-Built Drawings

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

#### 11. Material and Workmanship

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

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

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

#### 12. Permits and Codes

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

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

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

### 13. Health, Safety, and Accident Prevention

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

### 14. Temporary Heating

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

### 15. Availability and Use of Utility Services

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

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

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

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

#### **17. Temporary Buildings and Transportation of Materials**

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

#### **18. Clean Air and Water**

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

#### **19. Energy Efficiency**

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

#### **20. Inspection and Acceptance of Construction**

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

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

## 21. Use and Possession Prior to Completion

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

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

## 22. Warranty of Title

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

## 23. Warranty of Construction

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



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

**24. Prohibition Against Liens**

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

**Administrative Requirements**

**25. Contract Period**

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

**26. Order of Provisions**

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

**27. Payments**

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

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

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

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Title:

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

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

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

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

## 28. Contract Modifications

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

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

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

## 29. Changes

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

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

### 30. Suspension of Work

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

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

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

### 31. Disputes

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

### 32. Default

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

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

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

### 33. Liquidated Damages

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

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

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

### 34. Termination for Convenience

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

### 35. Assignment of Contract

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

### 36. Insurance

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

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

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

### 37. Subcontracts

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

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

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

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

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

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

### 39. Equal Employment Opportunity

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

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

- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or handicap.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or Federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.
- (j) Compliance with the requirements of this clause shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act and the Indian Preference clause of this contract.
- 40. Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.**
- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- (g) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

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#### 41. Interest of Members of Congress

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

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

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

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

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

#### 44. Royalties and Patents

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

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

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

#### 46. Labor Standards - Davis-Bacon and Related Acts

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

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

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

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

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

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



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

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

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

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

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

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

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47. Non-Federal Prevailing Wage Rates

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

48. Procurement of Recovered Materials.

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

# 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.

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

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.

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## 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



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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.

# General Conditions for Non-Construction Contracts

## Section II – (With 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-5370C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:**

- 1) Non-construction contracts (*without* maintenance) greater than \$100,000 - use Section I;
- 2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 905.200) greater than \$2,000 but not more than \$100,000 - use Section II; and
- 3) Maintenance contracts (including nonroutine maintenance), greater than \$100,000 – use Sections I and II.

### Section II – Labor Standard Provisions for all Maintenance Contracts greater than \$2,000

#### 1. Minimum Wages

- (a) All maintenance laborers and mechanics employed under this Contract in the operation of the project(s) shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development which is attached hereto and made a part hereof. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination, including any additional classifications and wage rates approved by HUD under subparagraph 1(b), shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- (b) (i) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate only when the following criteria have been met:
  - (1) The work to be performed by the classification required is not performed by a classification in the wage determination;
  - (2) The classification is utilized in the area by the industry; and
  - (3) The proposed wage rate bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) The wage rate determined pursuant to this paragraph shall be paid to all workers performing work

in the classification under this Contract from the first day on which work is performed in the classification.

#### 2. Withholding of funds

The Contracting Officer, upon his/her own action or upon request of HUD, shall withhold or cause to be withheld from the Contractor under this Contract or any other contract subject to HUD-determined wage rates, with the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor the full amount of wages required by this clause. In the event of failure to pay any laborer or mechanic employed under this Contract all or part of the wages required under this Contract, the Contracting Officer or HUD may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment or advance until such violations have ceased. The Public Housing Agency or HUD may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

#### 3. Records

- (a) The Contractor and each subcontractor shall make and maintain for three (3) years from the completion of the work records containing the following for each laborer and mechanic:
  - (i) Name, address and Social Security Number;
  - (ii) Correct work classification or classifications;
  - (iii) Hourly rate or rates of monetary wages paid;
  - (iv) Rate or rates of any fringe benefits provided;
  - (v) Number of daily and weekly hours worked;
  - (vi) Gross wages earned;
  - (vii) Any deductions made; and
  - (viii) Actual wages paid.
- (b) The Contractor and each subcontractor shall make the records required under paragraph 3(a) available for inspection, copying, or transcription by authorized representatives of HUD or the HA and shall permit such representatives to interview employees during working hours on the job. If the Contractor or any subcontractor fails to make the required records available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds.

#### 4. Apprentices and Trainees

- (a) Apprentices and trainees will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in:
  - (i) A bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration (ETA), Office of

Apprenticeship Training, Employer and Labor Services (OATELS), or with a state apprenticeship agency recognized by OATELS, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice; A

- (ii) A trainee program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, ETA; or
- (iii) A training/trainee program that has received prior approval by HUD.

- (b) Each apprentice or trainee must be paid at not less than the rate specified in the registered or approved program for the apprentice's/trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices and trainees shall be paid fringe benefits in accordance with the provisions of the registered or approved program. If the program does not specify fringe benefits, apprentices/trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.
- (c) The allowable ratio of apprentices or trainees to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the employer as to the entire work force under the approved program.
- (d) Any worker employed at an apprentice or trainee wage rate who is not registered in an approved program, and any apprentice or trainee performing work on the job site in excess of the ratio permitted under the approved program, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.
- (e) In the event OATELS, a state apprenticeship agency recognized by OATELS or ETA, or HUD, withdraws approval of an apprenticeship or trainee program, the employer will no longer be permitted to utilize apprentices/trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**5. Disputes concerning labor standards**

- (a) Disputes arising out of the labor standards provisions contained in Section II of this form HUD-5370-C, other than those in Paragraph 6, shall be subject to the following procedures. Disputes within the meaning of this paragraph include disputes between the Contractor (or any of its subcontractors) and the HA, or HUD, or the employees or their representatives, concerning payment of prevailing wage rates or proper classification. The procedures in this section may be initiated upon HUD's own motion, upon referral of the HA, or upon request of the Contractor or subcontractor(s).
  - (i) A Contractor and/or subcontractor or other interested party desiring reconsideration of findings of violation by the HA or HUD relating to the payment of straight-time prevailing wages or classification of work shall request such reconsideration by letter postmarked within 30 calendar days of the date of notice of findings issued by the HA or HUD. The request shall set

forth those findings that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The request shall be directed to the appropriate HA or HUD official in accordance with instructions contained in the notice of findings or, if the notice does not specify to whom a request should be made, to the Regional Labor Relations Officer (HUD). The HA or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.

- (b) Disputes arising out of the labor standards provisions of paragraph 6 shall not be subject to paragraph 5(a) of this form HUD-5370C. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this paragraph 5(b) include disputes between the Contractor (or any of its subcontractors) and the HA, HUD, the U.S. Department of Labor, or the employees or their representatives.

**6. Contract Work Hours and Safety Standards Act**

The provisions of this paragraph 6 are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" includes watchmen and guards.

- (a) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in paragraph 6(a), the Contractor and any

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

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

## **7. Subcontracts**

The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this Section II and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the provisions contained in these clauses.

## **8. Non-Federal Prevailing Wage Rates**

Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under state law to be prevailing, with respect to any employee in any trade or position employed under the Contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

# General Contract Conditions for Small Construction/Development Contracts

U.S. Department of Housing and Urban Development  
Office of Public and Indian Housing  
OMB Approval No. 2577-0157 (exp. 3/31/2020)

**Applicability.** The following contract clauses are applicable and must be inserted into small construction/development contracts, greater than \$2,000 but not more than \$150,000.

## 1. Definitions

Terms used in this form are the same as defined in form HUD-5370

## 2. Prohibition Against Liens

The Contractor is prohibited from placing a lien on the PHA's property. This prohibition shall apply to all subcontractors at any tier and all materials suppliers. The only liens on the PHA's property shall be the Declaration of Trust or other liens approved by HUD.

## 3. Disputes

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

## 4. Default

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

- (b) The Contractor's right to proceed shall not be terminated or the Contractor charged with damages under this clause if –
  - (1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor; and
  - (2) The Contractor, within 10 days from the beginning of such delay notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of Fact warrant such action, time for completing the work shall be extended by written modification to the contract. The findings of the Contracting Officer shall be reduced to a written decision which shall be subject to the provisions of the **Disputes** clause of this contract.
- (c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligation of the parties will be the same as if the termination had been for convenience of the PHA.

## 5. Termination for Convenience

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

## 6. Insurance

- (a) Before commencing work, the Contractor and each subcontractor shall furnish the PHA with certificates of insurance showing the following insurance is in force and will insure all operations under the Contract:

(1) Workers' Compensation, in accordance with state or Territorial Workers' Compensation laws.

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

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

(b) Before commencing work, the Contractor shall furnish the PHA with a certificate of insurance evidencing that Builder's Risk (fire and extended coverage) Insurance on all work in place and/or materials stored at the building site(s), including foundations and building equipment, is in force. The Builder's Risk Insurance shall be for the benefit of the Contractor and the PHA as their interests may appear and each shall be named in the policy or policies as an insured. The Contractor in installing equipment supplied by the PHA shall carry insurance on such equipment from the time the Contractor takes possession thereof until the Contract work is accepted by the PHA. The Builder's Risk Insurance need not be carried on excavations, piers, footings, or foundations until such time as work on the superstructure is started. It need not be carried on landscape work. Policies shall furnish coverage at all times for the full cash value of all completed construction, as well as materials in place and/or stored at the site(s), whether or not partial payment has been made by the PHA. The Contractor may terminate this insurance on buildings as of the date taken over for occupancy by the PHA. The Contractor is not required to carry Builder's Risk Insurance for modernization work which does not involve structural alterations or additions and where the PHA's existing fire and extended coverage policy can be endorsed to include such work.

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

## 7. Contract Modifications

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

(b) The Contracting Officer may modify the contract unilaterally (1) pursuant to a specific authorization stated in a contract clause (e.g., Changes); or (2) for administrative matters which

do not change the rights or responsibilities of the parties (e.g., change in the PHA address). All other contract modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer.

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

## 8. Changes

(a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract including changes:

(1) In the specifications (including drawings and designs);

(2) In the method or manner of performance of the work;

(3) PHA-furnished facilities, equipment, materials, services, or site; or,

(4) Directing the acceleration in the performance of the work.

(b) Any other written order or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances and source of the order and (2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days (5 days for oral orders) before the Contractor gives written notice as required. In the case of defective specifications for which the PHA is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause, or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting a written statement describing the general nature and the amount of the proposal. If the facts justify it, the Contracting Officer may extend the period for submission. The proposal may be included in the notice required under paragraph (b) above. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(f) The Contractor's written proposal for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following details:

(1) Direct Costs. Materials (list individual items, the quantity and unit cost of each, and the aggregate cost); Transportation and delivery costs associated with materials; Labor

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breakdowns by hours or unit costs (identified with specific work to be performed); Construction equipment exclusively necessary for the change; Costs of preparation and/ or revision to shop drawings resulting from the change; Worker's Compensation and Public Liability Insurance; Employment taxes under FICA and FUTA; and, Bond Costs - when size of change warrants revision.

- (2) Indirect Costs. Indirect costs may include overhead, general and administrative expenses, and fringe benefits not normally treated as direct costs.
- (3) Profit. The amount of profit shall be negotiated and may vary according to the nature, extent, and complexity of the work required by the change.

The allowability of the direct and indirect costs shall be determined in accordance with the Contract Cost Principles and Procedures for Commercial Firms in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31), as implemented by HUD Handbook 2210.18, in effect on the date of this contract. The Contractor shall not be allowed a profit on the profit received by any subcontractor. Equitable adjustments for deleted work shall include a credit for profit and may include a credit for indirect costs. On proposals covering both increases and decreases in the amount of the contract, the application of indirect costs and profit shall be on the net-change in direct costs for the Contractor or subcontractor performing the work.

- (g) The Contractor shall include in the proposal its request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the contract in its entirety.
- (h) The Contracting Officer shall act on proposals within 30 days after their receipt, or notify the Contractor of the date when such action will be taken.
- (i) Failure to reach an agreement on any proposal shall be a dispute under the clause entitled Disputes herein. Nothing in this clause, however, shall excuse the Contractor from proceeding with the contract as changed.
- (j) Except in an emergency endangering life or property, no change shall be made by the Contractor without a prior order from the Contracting Officer.

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

The HA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until three 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.

#### 10. Rights in Data and Patent Rights (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.

#### 11. 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.

#### 12. 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.

#### 13. 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

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- 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.

#### 14. Labor Standards - Davis-Bacon and Related Acts

##### (a) Minimum Wages.

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

a prominent and accessible place where it can be easily seen by the workers.

- (2) (i) Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

- (a) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (b) The classification is utilized in the area by the construction industry; and
- (c) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

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

(4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part



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

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

(c) **Payrolls and Basic Records.**

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

the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (2) (i) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1214-0149.)
- (ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (A) That the payroll for the payroll period contains the information required to be maintained under paragraph (c)(1) of this clause and that such information is correct and complete;
- (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and
- (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by subparagraph (c)(2)(ii) of this clause.
- (iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (3) The Contractor or subcontractor shall make the records required under subparagraph (c)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

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

- (e) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate

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

- (f) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- (g) Compliance with Copeland Act Requirements. The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.
- (h) Contract Termination; Debarment. A breach of the labor standards clauses in this contract may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.
- (i) Compliance with Davis-Bacon and related Act Requirements. All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (j) Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this clause shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the PHA, HUD, the U.S. Department of Labor, or the employees or their representatives.
- (k) Certification of Eligibility.
- (1) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
  - (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a United States Government

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contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

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

(m) Non-Federal Prevailing Wage Rates. Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under State law to be prevailing, with respect to any employee in any trade or position employed under the contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate exceeds:

- (i) the applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141 et seq.) to be prevailing in the locality with respect to such trade;
- (ii) an applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor (DOL) or a DOL-recognized State Apprenticeship Agency; or
- (iii) an applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

**Exhibit D**  
**MBE, Section 3 & EEO**

**LMHA Minority Business Enterprise (MBE), Female Business Enterprise (FBE), Disabled Business Enterprise (DBE) and Section 3 Programs**

ALL bidders should submit any MBE, FBE, and/or DBE certification, as applicable.

Bidders who will engage one or more subcontractors and/or hire one or more new employees to perform any portion of this contract, must comply with the requirements of LMHA's MBE and Section 3 Programs to be considered responsive.

Bidders who will not engage subcontractors and who will not hire new employees to perform any portion of this contract do not need to complete the forms included in this section of the bid packet. However, they should still submit any MBE, FBE, and/or DBE certification, as applicable.

**THE PARTICIPATION PERCENTAGE GOALS FOR THIS PROJECT ARE:**  
MBE - TWENTY-FIVE PERCENT (25%)  
FBE – TEN PERCENT (10%)  
DBE – ONE HALF OF ONE PERCENT (.5%)

- SECTION 3 REQUIRED NUMERICAL GOALS:**
- **AWARD AT LEAST 10% OF THE TOTAL DOLLAR AMOUNT OF THE CONTRACT TO SECTION 3 BUSINESS CONCERNS**
  - **HIRING SECTION 3 RESIDENTS IN A NUMBER EQUAL TO AT LEAST 30% OF THE AGGREGATE NUMBER OF NEW HIRES**

**I. LMHA Minority Business Enterprise (MBE), Female Business Enterprise (FBE), and Disabled Business Enterprise (DBE) Programs**

**A. Generally**

This contract includes provisions regarding **MINORITY BUSINESS ENTERPRISE (MBE), FEMALE BUSINESS ENTERPRISE (FBE), and DISABLED BUSINESS ENTERPRISE (DBE)** solicitation and employment for firms wishing to participate in LMHA federally funded procurement activities that have potential for MBE, FBE, or DBE involvement in accordance with Executive Order 11625

All bidders must comply with the requirements of LMHA's MBE Program to be considered responsive.

**THE PARTICIPATION PERCENTAGE GOALS For THIS PROJECT ARE:**  
MBE - TWENTY-FIVE PERCENT (25%)  
FBE – TEN PERCENT (10%)  
DBE – ONE HALF OF ONE PERCENT (.5%)

**FAILURE TO MEET THE MBE GOAL MAY HAVE A SERIOUS IMPACT  
ON THE EVALUATION OF A BIDDER'S RESPONSIVENESS!**

***B. Definitions***

The following definitions are used throughout the bid documents and Contract Documents:

1. **MBE** - Means Minority Business Enterprise. That is, a business which is fifty-one percent (51%), or more, owned by one or more persons who are members of a racial minority ("Racial Minority" is defined below), and in which such persons share economic interests and have proportionate control over management, interest in capital, and interest in earnings (minority/non-minority joint ventures are addressed elsewhere in these documents).
2. **FBE** - Means Female Business Enterprise. That is, a business which is at least fifty-one percent (51%) owned by one or more females, or in the case of a publicly owned business, at least 51% of the stock is owned by one or more females; is managed by, and the daily business operations are controlled by one or more females; and is a domestic corporation with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, firm or other business.
3. **DBE** - Means Disabled Business Enterprise. That is, a business which is fifty-one percent (51%), or more, owned by one or more disabled individuals, or in the case of a publicly owned business, at least 51% of the stock is owned by one or more disabled individuals; is managed by, and the daily business operations are controlled by one or more disabled individual; and is a domestic corporation with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, firm or other business.
4. **MBE Certification** -- All MBE, FBE, and DBE firms must be certified through either the **Tri-State Minority Supplier Development Council**, the **Louisville and Jefferson County Human Relations Commission**, or **MSD's Minority and Woman Business Enterprise Program**, or must provide evidence satisfactory to LMHA of minority ownership.
5. **Racial Minority** - Also called "Minority," means any United States Citizen who is:
  - a) **African American** (racial classification 2) - All persons of origins in any black African racial group not of Hispanic origin; or,
  - b) **Hispanic American** (racial classification 3) - All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish descended culture or origin, regardless of race; or,

- c) **Asian American** (racial classification 4) - All persons having origins in any of the Pre-Magellanic peoples of the Far East, Southeast Asia, the Indian Sub-Continent, or the Pacific Islands; or,
  - d) **American Indian or Native Alaskan** (racial classification 5) - All persons having origins in any of the Pre-Colombian peoples of North America, including Alaska, who maintain identifiable tribal affiliations, through membership and participation or community-identification; or,
  - e) **Hasidic Jew** (racial classification 6) - All persons having origins in the Hasidic Jewish culture, who maintain identifiable cultural affiliations, through membership and participation or community-identification.
6. **Disabled Person** - Means any person who has a physical or mental impairment which substantially limits one or more of such person's major life activities, or has a record of such an impairment, or is regarded as having such an impairment.
7. **Woman** - Means a person born with the physical and genetic characteristics commonly associated with the female gender as currently defined by the professional medical community.

***Women and disabled persons are not "Minority" persons, for the purposes of this project, unless they also meet one of the above-indicated definitions of a "Racial Minority."***

**C. *MBE, FBE, and DBE Certification***

All MBE, FBE, and DBE firms must be certified through the **Tri-State Minority Supplier Development Council**, 600 W. Main Street, Louisville, Kentucky 40202, (502) 625-0159, or the **Louisville and Jefferson County Human Relations Commission**, 410 West Chestnut Street, Louisville, Kentucky 40202, (502)574-3631; or **MSD's Minority and Woman Business Enterprise Program**, 700 West Liberty Street, Louisville, Kentucky 40202, [www.msdlouky.org](http://www.msdlouky.org). Certifications from other agencies will be reviewed on a case by case basis. A copy of the certification must be submitted upon request. **Questions concerning MBE participation may be directed to the Louisville Metro Housing Authority's MBE/Section 3 Coordinator, Phillip Stepteau, at (502) 569-4922.**

1. Certification through one or more of the listed agencies indicates that a firm meets or exceeds the certifying agency's requirements for MBE, FBE, or DBE certification, however, it should not be construed as implying LMHA approval of such MBE, FBE, or DBE. MBE, FBE, or DBE certification is not indicative of any qualification to perform the work for which the Bidder has proposed the MBE firm. It is the Bidder's inherent responsibility to ensure, **prior to submitting a bid**, that **ALL** proposed subcontractors are qualified.

***D. MBE, FBE, and DBE Participation in LMHA Contracts***

This policy applies to LMHA projects for construction, demolition, renovation, abatement, and similar activities. HUD mandates that the primary procurement responsibility of PHAs is to secure the best goods or services at the best price. However, MBE, FBE, and DBE participation is an integral and highly important part of LMHA's contracting activities. A minimum MBE, FBE, and DBE participation percentage goal has been established for this project and set forth above. The potential for achieving the MBE, FBE, and DBE participation percentage goal may depend upon the relative availability of MBE, FBE, and DBE firms in the categories of work anticipated. The Contract will be awarded to the responsible and responsive bidder who submits the lowest price, provided award serves LMHA's best interests.

1. **IN ORDER TO BE CONSIDERED RESPONSIVE**, a bidder must either meet the goals or provide evidence conclusively demonstrating that it made a strenuous, albeit unsuccessful, good faith effort to meet the goals. **Failure to aggressively respond to these requirements** is grounds for rejection of bid as non-responsive.
2. Law prohibits public housing agencies, including LMHA, from mandating MBE, FBE, or DBE participation. Bidders on LMHA projects are not obligated to use MBE, FBE, or DBE goods or services simply to meet the MBE, FBE, or DBE participation goal if the goods or services are available from non-MBE, non-FBE, or non-DBE sources at lower cost or using the MBE, FBE, or DBE would increase the cost of performance. Likewise, this policy shall not be construed as endorsing the representation of MBE, FBE, or DBE participation, when in fact a substantial portion of the participation proposed to be performed by an MBE, FBE, or DBE will be performed by the Contractor or by a third tier, non-MBE, non-FBE, or non-DBE subcontractor. For example:

If, on the *List of Proposed Subcontractors*, the bidder indicates that an MBE, FBE, or DBE will provide case work and trim carpentry services; and, the MBE, FBE, or DBE intends to, or commonly does, subcontract a substantial portion of its work to third tier non-MBE, non-FBE, or non-DBE subcontractors; such conditions would conflict with the intent of LMHA's MBE, FBE, and DBE Policy and the bidder's MBE, FBE, or DBE participation percentage would be reduced commensurately and its responsiveness reevaluated accordingly. The foregoing statements should not be construed as diminishing LMHA's commitment to MBE, FBE, or DBE participation. LMHA is committed to MBE, FBE, and DBE participation and expects contractors to employ MBE, FBE, and DBE firms to the fullest extent feasible.

***E. Calculating MBE Participation***

1. General -- An MBE's, FBE's, and DBE's participation in the Contract may count toward the goal to the extent that the MBE, FBE, or DBE performs



Contract work with its own forces or through an MBE, FBE, or DBE subcontractor that uses its own forces. Work that an MBE, FBE, or DBE subcontracts to a non-MBE, non-FBE, or non-DBE subcontractor does not count toward the goal. Any contractor, subcontractor, or joint venture, that claims MBE, FBE, or DBE participation may be required, at any time, to produce evidence that the portion of the total contract price claimed was actually awarded to, performed, or supplied by MBE, FBE, or DBE firms.

2. MBE, FBE, and DBE Qualifications -- For their participation to count toward the goal, MBE, FBE, and DBE firms must be currently certified as MBE, FBE, or DBE firms at the time of the bid opening. MBE, FBE, and DBE firms, to participate in the Contract, must meet all the responsiveness and responsibility requirements imposed on other contractors and subcontractors under the Contract.
3. Commercial Utility -- The participation of an MBE, FBE, or DBE may count toward the goal only if the MBE, FBE, or DBE performs a commercially useful function in executing the Contract work.
  - a) An MBE, FBE, or DBE firm's function may be commercially useful if it includes direct, day-to-day responsibility for significant work of the Contract and the MBE, FBE, or DBE actually fulfills its responsibilities by performing, managing, and supervising that work.
  - b) Responsibility for negotiating prices, determining quality and quantities, ordering, installing, and paying for materials and supplies involved in the MBE's, FBE's, or DBE's portion of the Contract work may, also, indicate commercial utility.
  - c) An MBE's, FBE's, or DBE's function is not commercially useful if the firm's actual role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to present the appearance of MBE, FBE, or DBE participation. In determining whether a firm is an extra participant, LMHA may examine similar transactions, contracts, or projects, particularly those in which MBE, FBE, or DBE firms do not participate.
  - d) An MBE, FBE, or DBE that does not perform, or bear and exercise responsibility for, at least 12 percent of the total cost of its Contract work with its own forces, or that subcontracts a greater portion of its Contract work than would be expected under normal industry practice for the type of work involved, is preemptively not performing a commercially useful function. An MBE, FBE, or DBE may challenge the presumption that it is not performing a commercially useful function. Because no privity can exist between LMHA and a subcontractor, MBE, FBE, and DBE subcontractors must assert such challenges through the prime contractor.
  - e) LMHA may evaluate industry practices, the amount and type of work awarded to the MBE, FBE, or DBE, and any other factors LMHA

deems appropriate, to determine whether a function is commercially useful.

4. MBE, FBE, or DBE Prime Contractors -- MBE, FBE, or DBE firms are under the same obligations as any other prime contractor with respect to LMHA's MBE, FBE, or DBE goals. To receive MBE, FBE, or DBE participation credit, an MBE, FBE, or DBE prime contractor must perform at least 12% of the Contract work with its own forces. MBE, FBE, or DBE prime contractors may be credited with MBE, FBE, or DBE participation to the extent that they perform the Contract work with their own forces and employ MBE, FBE, or DBE subcontractors pursuant to the provisions of this policy. For example:

If an MBE, FBE, or DBE prime contractor will perform \$12,000-worth of work with its own forces, and the total contract price is \$100,000, MBE, FBE, or DBE participation would be 12%. Thus, if the MBE, FBE, or DBE participation goal was 20%, the MBE, FBE, or DBE prime contractor would be short of the goal and required to either obtain another 8% participation or demonstrate fruitless good faith efforts to obtain another 8% and request a waiver of that portion of the goal.

5. Non-MBE, FBE, or DBE Prime Contractors - may be credited with MBE, FBE, or DBE participation based on the dollar value of that portion of the total contract work subcontracted to MBE, FBE, or DBE firms and performed by such MBE, FBE, or DBE firms using their own forces or through third tier MBE, FBE, or DBE subcontractors that use their own forces. For example:

If a non-MBE, FBE, or DBE prime contractor subcontracts \$15,000-worth of the total contract work to one or more MBE, FBE, or DBE subcontractors, and the total contract price is \$75,000, MBE, FBE, or DBE participation would be 20% ( $\$15,000/\$75,000$ ).

6. MBE, FBE, or DBE Subcontractors -- To receive MBE, FBE, or DBE participation credit, an MBE, FBE, or DBE subcontractor must perform at least 12% of its portion of the Contract work with its own forces. An MBE, FBE, or DBE subcontractor's participation in the Contract counts toward the goal to the extent that the MBE, FBE, or DBE performs Contract work with its own forces and through third-tier MBE, FBE, or DBE subcontractors that use their own forces. Work that an MBE, FBE, or DBE subcontractor subcontracts to a non-MBE, FBE, or DBE subcontractor does not count toward the goal. For example:

If an MBE, FBE, or DBE firm is subcontracted to fabricate and supply equipment for this project, at least 12% of the fabrication must be performed by the MBE, FBE, or DBE firms own forces, in its own facility.

- a) A prime contractor shall receive no credit for the participation of an MBE, FBE, or DBE subcontractor unless the prime contractor, before the start of work, delivers to LMHA a fully executed original

counterpart of the agreement between the prime contractor and the MBE, FBE, or DBE subcontractor.

- b) Such agreement must bear the prime contractor's and MBE, FBE, or DBE subcontractor's notarized signatures, must state the price the MBE, FBE, or DBE will receive for its work, and must include a reasonably detailed description of the work the subcontractor will perform.

- 7. Joint Ventures - Joint ventures between an MBE, FBE, or DBE and a non-MBE, FBE, or DBE, bidding and performing as a joint venture prime contractor or sub-contractor, may count toward the goal to the extent of the dollar value of the Contract work performed with the MBE, FBE, or DBE party's forces. For example:

If the joint venture will perform \$35,000-worth of the total contract work with its joint forces, and the MBE, FBE, or DBE party's forces will perform \$15,000-worth of that work, and the total contract price is \$100,000, MBE, FBE, or DBE participation would be 15% ( $\$15,000/\$100,000$ ).

If, in the preceding example, the joint venture were the prime contractor and employed MBE, FBE, or DBE, FBE, or DBE subcontractors to perform \$10,000-worth of the remaining total contract work, MBE, FBE, or DBE participation would be 25% ( $(\$15,000 + \$10,000)/\$100,000$ ).

- a) A joint venture shall receive no MBE, FBE, or DBE participation credit unless, before the start of work, it delivers to LMHA a fully executed original counterpart of the joint venture agreement.
- b) Such agreement must bear the notarized signatures of all parties to the agreement, must state the sum each party will receive for its work, and must include a reasonably detailed description of the work each party will perform.
- c) To be counted at all, the MBE, FBE, or DBE party's portion of the dollar value of the work must be distinct and clearly defined.

- 8. Materials and Supplies -- Any contractor or subcontractor may, under certain conditions, claim MBE, FBE, or DBE participation credit for MBE, FBE, or DBE suppliers who provide materials for the Contract work. MBE, FBE, or DBE supplier participation is based, generally, on the dollar value of the goods purchased from the MBE, FBE, or DBE supplier. For example: Subject to the conditions following this example, if a non-minority prime contractor purchases \$20,000-worth of supplies from an MBE, FBE, or DBE supplier, and the total contract price is \$100,000, MBE, FBE, or DBE participation would be 20% ( $\$20,000/\$100,000$ ). Materials and supplies purchased from MBE, FBE, or DBE firms for use in the Contract may count toward the goal as follows:

- a) If the materials or supplies are purchased from an MBE, FBE, or DBE manufacturer, 100 percent of the cost of the materials or supplies may count toward the goal.
    - (1) For the purposes of these provisions, a “manufacturer” is a business entity that operates or maintains a factory or production facility that routinely produces, on its premises and in the normal course of its business, materials, supplies, articles or equipment required under the Contract.
  - b) Materials and supplies purchased from MBE, FBE, or DBE firms who are regular retail or wholesale dealers will only be counted toward the goal at 60 percent of their cost.
    - (1) For the purposes of these provisions, a “regular retail or wholesale dealer” is a business entity that:
      - (a) owns, operates, or maintains a store, warehouse, or other establishment in which materials, supplies, articles or equipment required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the normal course of business; and
      - (b) is an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the items required under the Contract.
    - (2) A person may be a regular retail or wholesale dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as described above, if the person owns and operates distribution equipment for distribution of such products.
    - (3) Long-term lease agreements by which a regular retail or wholesale dealer supplements its own distribution equipment may be acceptable as to the goal, but ad hoc or contract-by-contract agreements for that purpose are not.
    - (4) Packagers, brokers, manufacturers’ representatives, and other persons who arrange or expedite transactions are not regular retail or wholesale dealers within the meaning of these provisions. Such persons’ or entities’ participation shall not count toward the MBE, FBE, or DBE or DBE goal.
9. Fees or commissions -- charged by an MBE, FBE, or DBE that is neither a manufacturer nor a regular retail or wholesale dealer, for assistance in procuring materials or supplies, or for feed or transportation charges for delivering materials or supplies required under the Contract, may count

toward the goal, provided LMHA finds such fees or commissions are reasonable and not excessive in comparison to fees customarily allowed for similar services. No portion of the cost of the materials and supplies themselves shall count toward the goal under these circumstances, unless they qualify under one of the other provisions of this subsection.

10. Professional Services -- Fees or commissions charged by an MBE, FBE, or DBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the Contract, may count toward the goal, if LMHA finds them reasonable and not excessive in comparison to fees customarily allowed for similar services.
11. Any contractor, subcontractor, or joint venture that claims MBE, FBE, or DBE participation may, at any time, be required to produce evidence that the portion of the total contract price claimed was actually awarded to, and performed or supplied, by MBE, FBE, or DBE firms.

***F. Required Forms***

Bidders must submit the following two (2) forms, among others, as a part of the bid proposal, regarding proposed employment of MBE, FBE, or DBE firms on this project:

1. *Schedule of Minority Business Participation*
  - a) The Bidder shall list, on this form, all MBE, FBE, or DBE firms proposed to perform as prime contractors or subcontractors for this project; the type of work to be performed; the anticipated start and completion dates for the work to be performed; and the agreed upon price for the work.
  - b) The Bidder, by completing this form, represents that, if awarded this contract, it will enter into formal contracts (provided each MBE, FBE, or DBE is accepted, in writing, by LMHA), in the amounts indicated, with the MBE, FBE, or DBE firms listed on this form.
2. *Schedule of MBE, FBE, or DBE Unavailability*
  - a) In the event the Bidder is unable to achieve the MBE, FBE, or DBE participation percentage goal, the Bidder shall list on this form all MBE, FBE, or DBE firms contacted and/or considered, but not proposed to participate in this project, and the reasons they are not proposed to participate.

**FAILURE TO SATISFY THE MBE, FBE, or DBE PARTICIPATION PERCENTAGE GOALS MAY HAVE A SIGNIFICANT ADVERSE IMPACT ON A BIDDER'S RESPONSIVENESS!**

***G. Evidence of Responsiveness***

As evidence that the Bidder has made a significant good faith effort to involve MBE, FBE, or DBE firms in this project, the Contractor, upon request, shall make available to the Louisville Metro Housing Authority such documentation as is described below.

Bidders that fail to meet MBE, FBE, or DBE goals and fail to demonstrate sufficient good faith efforts to merit a waiver, may be required to forfeit their bid guaranty as agreed liquidated damages.

***H. Waiver of MBE, FBE, or DBE Goals***

Minority Business Enterprise participation is a priority objective of this agency and LMHA's MBE, FBE, and DBE policy applies to all construction and abatement contracts. If, because of extreme circumstances, a bidder cannot meet the MBE, FBE, or DBE participation percentage goal, LMHA may grant a full or partial waiver of the goal. LMHA will, however, grant a waiver of the MBE, FBE, or DBE participation percentage goal only upon receipt of persuasive evidence that a bidder has made diligent, albeit ultimately unsuccessful, efforts to meet the MBE, FBE, or DBE participation percentage goal (as further explained below).

1. **Bidders must make every reasonable effort to meet the MBE, FBE, or DBE goals.**

Limited or merely formalistic efforts are not considered "good faith" efforts. The bidder must demonstrate that, given all relevant circumstances, it actively and aggressively endeavored to meet the MBE, FBE, or DBE goals.

2. **In the event a bidder finds that it cannot fully satisfy the MBE, FBE, or DBE goals** of this solicitation, the bidder must submit a written request for a full or partial waiver of the goals and receive approval prior to submission of bid. **All requests for waivers for MBE, FBE, and DBE must be submitted at least 7 days prior to bid opening.** Such a request to LMHA must be signed by the bidder's authorized agent and addressed to:

Phillip Stepteau, MBE /Section 3 Coordinator  
Louisville Metro Housing Authority  
420 South Eighth Street  
Louisville, KY 40203

If the bidder will not use any subcontractors or has met the full MBE, FBE, and DBE goals, it is not necessary to request a waiver.

- a) The written request for a waiver must explain how the bidder views and evaluates the subcontractable components of a project and why the bidder was unable to attain the MBE, FBE, or DBE participation percentage goal. The request must also include detailed narrative statements describing the bidder's "good faith" efforts to secure MBE, FBE, and DBE participation. If bidder has requested such waiver from LMHA within the last five (5) years, submit copies of all waiver requests.

3. Examples of "good faith efforts" to attain the MBE, FBE, or DBE goal include, but are not necessarily limited to:
- a) **Attending scheduled meetings**, regarding the project.
  - b) **Providing written notice**, (preferably certified mail) to a reasonable number of MBE, FBE, and DBE firms requesting bids. *A reasonable number means at least as many MBE, FBE, or DBE firms as non-MBE, FBE, or DBE firms, in each trade category, must be contacted.* Copies of certified letters sent to MBE, FBE, or DBE firms requesting bids, and original, signed, receipts, or copies of telegrams soliciting bids from MBE, FBE, or DBE firms, indicating the date of delivery, would be considered evidence of such efforts.
  - c) **Allowing sufficient time** (five working days, or more, as time permits) **for MBE, FBE, and DBE firms to respond** to a written notice. *Sufficient time means initiating contact with MBE, FBE, or DBE firms at least as far in advance of the bid date as contact is initiated with non-MBE, FBE, or DBE firms.* Original responses from MBE, FBE, or DBE firms indicating the reasons why they do not wish to participate in this project and bids received from MBE, FBE, or DBE firms on those firms letterhead or standard bid forms would be considered evidence of such efforts.
  - d) **Following up** written notification by **telephone or other means**. Date-stamped copies of telephone conversation records and faxed letters would be considered evidence of such efforts.
  - e) **Contacting MBE, FBE, and DBE assistance agencies** and organizations (see Section J of Official Bid Package for lists) and the LMHA's MBE/Section 3 Coordinator at (502) 569-4922, for assistance in locating qualified MBE, FBE, or DBE firms. Date-stamped copies of telephone conversation records and faxed or mailed letters would be considered evidence of such efforts.
  - f) **Selecting portions of the work to be performed by MBE, FBE, and DBE firms** in order to increase the likelihood of meeting the MBE, FBE, or DBE goals. Documentation demonstrating that extra effort was made to solicit MBE, FBE, or DBE bids for categories of work in which MBE, FBE, or DBE firms are particularly well represented in the geographical area of the project would be considered evidence of such efforts.
  - g) **Providing MBE, FBE, and DBE firms with adequate information about the project** when requesting quotations (i.e., identifying potential subtrades involved in the project and identifying a potential dollar range for those subtrades). Copies of certified letters sent to MBE, FBE, and DBE firms, and original, signed, receipts, date-stamped copies of telephone records and faxed or mailed follow-up letters, or copies of

telegrams sent to MBE, FBE, and DBE firms, would be considered evidence of such efforts.

- h) **Advertising in general circulation media (e.g., Courier-Journal), and media aimed at minorities** (e.g., Louisville Defender), at least 20 days before bids are due. Or, if 20 days are not available, publication for a shorter, but maximum available, period is acceptable. Copies of legal advertisements published as an attempt to obtain MBE, FBE, and DBE involvement would be considered evidence of such efforts.
  - i) **Making efforts to assist MBE, FBE, or DBE firms** in obtaining bonding, credit, or insurance. Date-stamped copies of telephone conversation records and faxed or mailed letters to MBE, FBE, or DBE firms and/or bondsmen, creditors, or insurers would be considered evidence of such efforts.
  - j) **Making efforts to meet and negotiate** with potential MBE, FBE, and DBE Bidders prior to the bid opening. Copies of certified letters sent to MBE, FBE, and DBE firms and original, signed, receipts, date-stamped copies of telephone records and faxed or mailed follow-up letters, or copies of telegrams sent to MBE, FBE, and DBE firms, would be considered evidence of such efforts.
  - k) **Efforts made by the Bidder to expand its search** for MBE, FBE, and DBE firms, beyond the usual geographic boundaries. Documentation demonstrating that such efforts were made would be considered evidence of such efforts.
4. LMHA reserves the right to examine the Bidder's bid preparation materials, including all requests for bids the Bidder issued to potential subcontractors, the Bidder's bid calculation work sheets, and the Bidder's telephone records, notes, and any other information LMHA believes may be helpful in verifying the Bidder's assertions.
5. The bidder's **delivery of a request** for waiver **does not**, in and of itself, **ensure** that such a **request will be granted**.
- a) A full or partial waiver may be granted only after the Louisville Metro Housing Authority has thoroughly reviewed the project's MBE, FBE, or DBE participation potential. Documentation supporting a request for waiver, if such evidence exists, may be presented to the Louisville Metro Housing Authority's Executive Director for a final decision.
  - b) If a waiver is granted, and there are no other impediments to the award of the contract, the contract award process may proceed.
  - c) If a waiver is not granted, or if no request for waiver is received, and the bid is otherwise acceptable, the Louisville Metro Housing Authority may require the Bidder to satisfy the total MBE, FBE, and DBE goals at



no additional cost to the Louisville Metro Housing Authority or may deem the Bidder non-responsive.

***I. Replacing MBE, FBE, or DBE Subcontractors***

1. Any contractor who proposes to replace a proposed or accepted MBE, FBE, or DBE subcontractor must maintain the MBE, FBE, or DBE participation percentage that existed prior to the replacement of that subcontractor, or, if possible, achieve an even greater MBE, FBE, or DBE participation percentage. If the contractor finds it cannot satisfy these requirements, it must submit a request for waiver of the MBE, FBE, or DBE participation percentage goal, as prescribed above.
2. LMHA reserves the right to conduct compliance reviews on minority and non-minority contractors that utilize MBE, FBE, or DBE subcontractors, or perform as joint ventures. Contractors shall maintain records of all MBE, FBE, or DBE participation for three (3) years following completion of the project. Failure on the part of the contractor to comply with these requirements could result in the withholding of payment, termination of the Contractor's right to proceed with the work, legal fines, imprisonment, or all of the above.

***J. Assistance to MBE, FBE, and DBE firms***

The Louisville Metro Housing Authority actively works to assist minority vendors and contractors/subcontractors. LMHA is committed to providing equal opportunities for Minority Business Enterprises (MBE, FBE, and DBE firms).

Such opportunities are advertised through newsletters and newspapers, including minority newspapers, minority purchasing councils, and the Department of Housing and Urban Development.

When requested, LMHA will provide special assistance, to the fullest extent possible, to MBE, FBE, and DBE firms, by providing instruction on the preparation of bids, MBE, FBE, and DBE policy, and any other requirements related to LMHA's MBE, FBE, and DBE program, in connection with activities including but not necessarily limited to:

1. Architectural, Engineering, and similar Professional Services contracts;
2. Construction and Maintenance contracts;
3. Purchase Contracts; and,
4. Bank Deposits.

MBE, FBE, or DBE firms, and others, seeking assistance in these areas should first contact:

1. Tri-State Minority Supplier Development Council, 600 West Main Street, Louisville, KY 40202.  
Contact: (502) 625-0159

**MBE, SECTION 3 AND EEO  
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2. Kentucky Cabinet for Economic Development, Department of Existing Business & Industry, Minority Business Division, 2201 Capital Plaza Tower, Frankfort, KY 40601.  
Contact: (502) 564-2064
  
3. Louisville and Jefferson County Human Relations Commission, 410 West Chestnut Street, Suite 300A, Louisville, KY 40202.  
Contact: (502) 574-3631

**NOTE: The following forms on pages 15-25 shall be completely filled out and submitted with the bid.**

**If requesting Section 3 status, complete and submit pages 39-41 with bid.**





**LIST OF PROPOSED SUBCONTRACTORS**

The following list of proposed subcontractors is required to be submitted with each bidder's proposal, in accordance with the requirements of Section C of this solicitation. All subcontractors are subject to the approval of LMHA. **PROPOSED SUBCONTRACTORS AND SUBCONTRACT AMOUNTS SHALL NOT BE CHANGED, NOR SHALL ANY ADDITIONAL SUBCONTRACTORS BE EMPLOYED, WITHOUT THE EXPRESS WRITTEN CONSENT OF THE LOUISVILLE METRO HOUSING AUTHORITY.**

<u>NAME OF SUBCONTRACTOR</u>	<u>CATEGORY OF WORK</u>	<u>\$ Amount</u>
1. _____		
2. _____		
3. _____		
4. _____		
5. _____		
6. _____		

(Employer ID numbers must be provided upon request)

Use Additional Sheets If Necessary

**THIS FORM MUST BE COMPLETED AND SUBMITTED WITH  
THE OFFICIAL BID PACKAGE.**

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**NOTE: WITHIN TWO WEEKS OF CONTRACT EXECUTION, THE GENERAL CONTRACTOR SHALL SUBMIT, FOR THIS CONTRACT, COPIES OF ALL SUBCONTRACTOR CONTRACTS OR WRITTEN AGREEMENTS TO THE LOUISVILLE METRO HOUSING AUTHORITY**

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<p><b>NOTE:</b> If third tier subcontracts are intended, the information on the following page must be provided for <u>each</u> proposed subcontractor.</p>
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**NON-MBE, FBE, DBE SUBCONTRACTOR/SUPPLIER FORM**

**ONE FORM FOR EVERY PROPOSED NON-MBE, FBE, AND DBE  
SUBCONTRACTOR/SUPPLIER MUST BE COMPLETED AND SUBMITTED WITH THE  
OFFICIAL BID PACKAGE.**

In addition to conforming to all other requirements of the Invitation to Bid, to be considered responsive, a Bidder must submit this form, fully completed, for every non-minority business enterprise subcontractor/supplier proposed.

Company Name, Address, Telephone Number, and Point of Contact:

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Dollar Value of Proposed Subcontract/Purchase Order:

\$ \_\_\_\_\_

Description of Proposed Services and/or Materials:

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**The penalty for making false statements in offers (10 year imprisonment and/or \$10,000 fine) is prescribed in 18 U.S.C. 1001.**

**NOTE: Failure to complete and submit THIS form or comply with directions therein is ground for bid rejection.**



**Instructions for Completing EMPLOYMENT DEMOGRAPHICS Form**

1. **Duty to Submit Form** -- Every bidder shall complete the *Employment Demographics* form (hereafter, the Form). Every bidder shall ensure that each of its sub-bidders also completes the Form. The Bidder shall submit fully executed Forms for itself and each sub-bidder, with its bid, in the package labeled "Supplemental Bid Information."
2. **Space Constraints/Additional Forms** -- If the space provided on a single Form is insufficient to list every employee (see definition below) of the bidder or sub-bidder completing the Form (hereafter, the Entity), such Entity shall use additional Forms. Said Entity shall, however, ensure that each separate Form is dated, signed, and notarized. Each Official Bid Package contains one (1) blank copy of the Form. From that, the Bidder shall make as many copies as needed to ensure compliance with the preceding requirements.
3. **Completing the Form** -- The Form is divided into six numbered columns. Write the appropriate name and check the appropriate box at the top of the Form, then complete each column as follows:

**Columns 1 and 2** -- Identify, by name, each and every employee, officer, principal, and agent of the Entity. Identify every such person (hereafter, the employee), whether or not intended to perform work under or related to this Contract. Be careful to list each employee by last name first. List only proper, legal names, do not list nicknames. Do not list names of persons the Entity employs as independent contractors. If the employee routinely works less than 37 and 1/2 hours per week, write the letter "P" in the left margin adjacent to the employee's name.

**Column 3** -- State the employee's job title (e.g., secretary, laborer, carpenter, CEO). Use the job titles the Entity actually, routinely uses to describe the employee.

**Column 4** -- State the date upon which the Entity hired the employee. If the employee has left the Entity's employ in the past and returned to work for the Entity again, state the most recent date of hire.

**Column 5** -- Describe the nature of the work the employee routinely performs for the Entity. For example, if the employee's job title is "Laborer," the employee's work may be described as "performs unskilled physical labor." Or, a "Secretary" might be described as doing "filing, typing, etc." Use additional lines if necessary to provide a clear description of an employee's duties.

**Column 6** -- State the employee's race. Use the racial classifications provided in page 2, Section M. If you write "other" or a similar classification in Column 6, attach a signed statement explaining in detail exactly what is meant by such description. Attach a separate signed statement for each employee so described, tailoring each such statement to the employee to whom it refers.

4. Each Form shall be signed and dated by an authorized officer of the Entity and shall be notarized.



**AGREEMENT TO NOTIFY LMHA OF JOB OPENINGS**

|| This form to be completed and submitted by prime contractor and all subcontractors. ||

By my signature below, \_\_\_\_\_ (hereafter “the Company”), agrees to the  
(Company’s Name)  
following conditions:

1. The Company shall, if awarded the contract for which this Bid is offered, give LMHA notice of any and all job openings that may arise at the Company during the course of that contract.
2. Such notice shall be in writing and mailed, first class, to LMHA via the U.S. Postal Service within two business days after such opening arises. The notice shall describe the minimum qualifications and requirements of the job, the nature of the work, the expected pay rate or range, the place and manner of submitting applications, the name, address and telephone number of the person to contact to obtain an application or additional information, and the date by which applications must be submitted.
3. LMHA will notify its residents of such job openings and encourage qualified residents to submit applications for employment.
4. The Company will, if it receives an application from a qualified LMHA resident, give that application and applicant the same opportunity and consideration for the job as would be given any other, similarly qualified applicant and, if such applicant is the most qualified applicant and there is no bar to employing the applicant, the Company will hire the applicant for the job if it hires anyone for the job.

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

By: \_\_\_\_\_  
(Authorized Officer’s Signature)

In witness whereof, I hereunto set my hand and official seal:

\_\_\_\_\_  
(Notary’s Signature)

\_\_\_\_\_  
(Notary’s printed name)

My commission expires \_\_\_\_\_.

**AFFIX  
NOTARY’S  
SEAL**

**STATEMENT OF INTENT TO PERFORM AS A  
MINORITY BUSINESS ENTERPRISE CONTRACTOR/SUBCONTRACTOR**

(Separate form required for each MBE, FBE, and DBE prime or sub-bidder)

Name of Prime Bidder: \_\_\_\_\_

Name of MBE firm completing this form: \_\_\_\_\_

The undersigned wishes to perform work in connection with the above referenced project as:

Individual       Corporation       Partnership       Joint Venture

The undersigned hereby confirms its status as a Minority Business Enterprise as defined by LMHA and that **a copy of the certification from the agency specified in Section C of this solicitation, or other evidence, is attached hereto.**

The undersigned intends to perform the following work in connection with this project (specify, in detail, the work to be performed):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Bid amount to be entered by sub-contractor \$** \_\_\_\_\_

The undersigned MBE projects its start and completion dates for the work as follows:

Project Start: \_\_\_\_\_ Project Completion: \_\_\_\_\_

BY: \_\_\_\_\_  
(Signature of MBE's Principal) (Name and Title)

THIS FORM MUST BE COMPLETED, and included in this *Supplemental Bid Information* package, by each and every MBE contractor or subcontractor proposed to participate in this project.

The penalty for making false statements in offers (10 years imprisonment and/or \$10,000 fine) is prescribed in 18 U.S.C. 1001.

**MBE, SECTION 3 AND EEO  
CONTRACT REQUIREMENTS  
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**AFFIDAVIT OF MINORITY BUSINESS ENTERPRISE**

(Separate form required for each MBE, FBE, and DBE proposed)

State of \_\_\_\_\_ County of \_\_\_\_\_

I hereby declare and affirm that \_\_\_\_\_ is a Minority  
(Bidder's printed company name)

Business Enterprise (MBE), as defined by LMHA in the bid solicitation and that I am an officer of the above referenced MBE firm, and that I am authorized to provide information required by LMHA to support that firm's representation that it is a Minority Business Enterprise.

I do solemnly declare and affirm, under the penalties of perjury, that the foregoing is true and correct, and that I am authorized, on behalf of the above named firm, to make this affidavit.

\_\_\_\_\_  
(Signature of Affiant)

\_\_\_\_\_  
(Printed name and title of Affiant)

STATE OF KENTUCKY, COUNTY OF JEFFERSON, CITY OF LOUISVILLE

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

\_\_\_\_\_, the undersigned officer, personally appeared before me,  
(Printed name of Affiant)

known to me to be the person described in the foregoing Affidavit, and acknowledged that he/she executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal:

\_\_\_\_\_  
(Notary's Signature)

\_\_\_\_\_  
(Notary's printed name)

My commission expires \_\_\_\_\_.

**AFFIX  
NOTARY'S  
SEAL**

THIS FORM MUST BE COMPLETED, and included in this *Supplemental Bid Information* package, by each and every minority contractor or subcontractor proposed to participate in this project.

**The penalty for making false statements in offers (10 years imprisonment and/or \$10,000 fine) is prescribed in 18 U.S.C. 1001.**

**MBE, SECTION 3 AND EEO  
CONTRACT REQUIREMENTS  
FORMS AND DOCUMENTS**

**LEGITIMACY OF JOINT VENTURE**

(Separate form required for each joint venture)

**Majority Party's Name, Address, Phone, and Principal's Name:**

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**Minority Party's Name, Address, Phone, and Principal's Name:**

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Portion of work to be performed by Majority Party: \_\_\_\_\_% \$ \_\_\_\_\_  
Portion of work to be performed by Minority Party: \_\_\_\_\_% \$ \_\_\_\_\_

(Provide additional details on following page if applicable.)

"The undersigned do hereby declare and affirm, under the penalties of perjury, that the foregoing statements are true and correct and that **all material information necessary to identify and explain the terms and operation of the joint venture, and the intended participation by each joint venture, in this undertaking, is attached hereto.** Further, the undersigned agree to provide LMHA current, complete, and accurate information regarding the actual joint venture work, payments and any proposed changes in the above-stated arrangements, and to permit audits and/or examinations of books, records, and files of the joint ventures by authorized representatives of LMHA. The undersigned recognize and acknowledge that the statements herein are given under oath and any material misrepresentation will be grounds for terminating any contract that may be awarded the undersigned for this project."

BY: \_\_\_\_\_  
(Signature of Majority Party's Principal)

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

BY: \_\_\_\_\_  
(Signature of Minority Party's Principal)

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

Which, if any, of the parties to this venture are MBE firms?

THIS FORM MUST BE COMPLETED, and included in this *Supplemental Bid Information* package, by every joint venture proposed to participate in this project (Attach Joint Venture Agreement and Letters of Incorporation).

The penalty for making false statements in offers (10 years imprisonment and/or \$10,000 fine) is prescribed in 18 U.S.C. 1001.

**DETAILS OF JOINT VENTURE AGREEMENT**

(Separate form required for each joint venture)

The **Majority** Party normally employs \_\_\_\_\_ tradespersons and performs work in the following trades:

\_\_\_\_\_

The **Minority** Party normally employs \_\_\_\_\_ tradepersons and performs work in the following trades:

\_\_\_\_\_

Indicate all work to be performed under this contract by the parties to this joint venture and the dollar value of each item (on a per-party basis):

**Description of Work Item**

**Party Performed By**

**\$ Value**

<b><u>Description of Work Item</u></b>	<b><u>Party Performed By</u></b>	<b><u>\$ Value</u></b>

**Total Dollar Value: \$\_\_\_\_\_**

(Attach additional pages if needed.)

**IF THE BID INVOLVES A JOINT VENTURE OR JOINT VENTURES, THIS FORM  
MUST BE COMPLETED AND SUBMITTED WITH THE OFFICIAL BID PACKAGE.**

**II. SECTION 3 REQUIREMENTS**

A. Paragraph 40.(f) of Section I, *General Conditions* is replaced with the following:

The purpose of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u - Section 3) is to ensure that employment and other economic opportunities shall be to the greatest extent feasible and directed to low and very low income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low and very low income persons.

1. Definitions of specific terms are as follows:

a) *New Hires*: Full time employees for permanent, temporary or seasonal employment opportunities.

b) *Section 3 Business Concern*: A business concern:

- That is 51% or more owned Section 3 residents; or,
- Whose permanent, full time employees include persons, at least 30% of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or,
- That provides evidence of a commitment to subcontracts in excess of 25% of the dollar award of all subcontract to be awarded to business concerns that meet the qualifications set forth in paragraph (1) or (2) above.

c) *Section 3 Resident*:

- A public housing resident; or,
- An individual who resides in the metropolitan statistical area and who is a low-income person (families, including single persons, whose incomes do not exceed 80% of the median family income) or very low-income person (families, including single persons, whose incomes do not exceed 50% of the median family income).

d) *Subcontractor*: Any entity (other than a person who is an employee of the Contractor) that has a contract with the Contractor to undertake a portion of the Contractor's obligation for the performance of work.

2. Contractor's may demonstrate compliance with the "greatest extent feasible" requirement of Section 3 by meeting the numerical goals set forth for

providing training, employment, and contracting opportunities to Section 3 residents and business concerns as follows:

- a) Awarding **at least 10%** of the total dollar amount of the Contract to Section 3 business concerns; and
  - b) Hiring Section 3 residents in a number equal to **at least 30%** of the aggregate number of new hires.
3. Contractor's shall provide training and employment opportunities to Section 3 residents in the following order of priority:
- a) Residents of the housing development or developments for which the Section 3 covered assistance is expended;
  - b) Residents of other housing developments managed by the Louisville Metro Housing Authority;
  - c) Participants in HUD YouthBuild programs in the metropolitan statistical area; and
  - d) Other Section 3 residents of the metropolitan statistical area.
4. Contractor's shall award to Section 3 business concerns in the following order of priority:
- a) Business concerns that are 51% or more owned by residents of the housing development or development for which the Section 3 covered assistance expended, or whose full, permanent work force includes 30% of these persons as employees;
  - b) Business concerns that are 51% or more owned by residents of other Louisville Metro Housing Authority developments, or whose full time permanent workforce includes 30% of those persons as employees;
  - c) HUD YouthBuild programs being carried out within the metropolitan statistical area; and
  - d) Business concerns that are 51% or more owned by Section 3 residents, or whose permanent, full time workforce includes no less than 30% Section 3 residents, or that subcontract in excess of 25% of the total amount of subcontracts to business concerns in (1) and (2) above.
5. A contractor that has not met the numerical goals set forth has the burden of demonstrating why it was not feasible to meet the numerical goals set forth in this section.

- B. Paragraph 40.(g) of Section I, *General Conditions* is replaced with the following:

**Employment Demographics Reporting Requirements** -- The Contractor and each subcontractor shall complete and submit "Employment Demographics" forms once every month, or more frequently if LMHA so chooses, during the course of the contract.

In completing the forms the Contractor and each subcontractor shall clearly identify persons newly employed since the last form was submitted (hereafter "New Hires"). The Contractor or subcontractor shall provide the address and telephone number of each New Hire, and shall state whether each New Hire is a Section 3 Resident. The Contractor shall collect the forms and deliver them to LMHA by the seventh calendar day of each such month. LMHA will provide the Contractor with proper, blank forms at the pre-construction conference, from which the Contractor shall make and distribute copies for its own use and its subcontractors' use. The Contractor's failure to submit a monthly Employment Demographics form, or that of any subcontractor, is ground for termination, for default, of the Contractor's right to proceed with the work.

- C. Paragraph 40.(h) of Section I, *General Conditions* is replaced with the following:

**Notice of Job Openings** -- The Contractor shall notify LMHA of any and all job openings that arise in the Contractor's company during the course of the Contract. Such notice shall be in writing and mailed, first class, to LMHA via the U.S. Postal Service within two business days after such opening arises. The notice shall describe the minimum qualifications and requirements of the job, the nature of the work, the expected pay rate or range, the place and manner of submitting applications, the name, address and telephone number of the person to contact to obtain an application or additional information, and the date by which applications must be submitted. LMHA will notify its residents of such job openings and encourage qualified residents to submit applications for employment. The Contractor shall, if it receives an application from a qualified LMHA resident, give that application and applicant the same opportunity and consideration for the job as would be given any other, similarly qualified applicant and, if such applicant is the most qualified applicant and there is no bar to employing the applicant, the Contractor shall hire the applicant for the job if it hires anyone for the job. The Contractor's right to proceed with the work may be terminated, for default, upon failure to perform this obligation.



**SECTION 3 REQUIRED NUMERICAL GOALS:**

- **AWARD AT LEAST 10% OF THE TOTAL DOLLAR AMOUNT OF THE CONTRACT TO SECTION 3 BUSINESS CONCERNS**
- **HIRING SECTION 3 RESIDENTS IN A NUMBER EQUAL TO AT LEAST 30% OF THE AGGREGATE NUMBER OF NEW HIRES**

**SECTION 3 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).*

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- 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.

The below referenced documents are included as part of this section of the contract documents:

- Contractor Section 3 Plan Format (2 pages)
- Table A of Contractor Section 3 Plan Format (1 page)
- Table B of Contractor Section 3 Plan Format (1 page)
- Certification Form for Contractor Section 3 Plan Format (1 page)
- Form of *Certification for Business Concerns Seeking Section 3 Preference in Contracting and Demonstration of Capability* (1 page)
- Section 3 Business Concern Affidavit Worksheet (2 pages)
- Form 6 – Section 3 Business Concern Affidavit (2 pages)

**III. CONTRACTOR SECTION 3 PLAN FORMAT**

\_\_\_\_\_ agrees to implement the following specific affirmative action steps directed at increasing the utilization of lower income residents and businesses within the city of Louisville, Kentucky.

- A. To ascertain, from the locality's program official the exact boundaries of the Section 3 covered project area and where advantageous, seek the assistance of local officials in preparing and implementing the affirmative action plan.
- B. To attempt to recruit, from within the city, the necessary number of lower income residents through: Local advertising media, signs placed at the proposed site for the project, and community organizations and public or private institutions operating within, or serving, the project area such as Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Program, Hometown Plan, or the U.S. Employment Service.
- C. To maintain a list of all lower income residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.
- D. To insert this Section 3 plan in all bid documents, and to require all bidders on subcontracts to submit a Section 3 affirmative action plan including utilization goals and the specific steps planned to accomplish these goals.
- E. To ensure that subcontracts which are typically let on a negotiated rather than a bid basis in areas other than Section 3 covered project areas, are also let on a negotiated basis, whenever feasible, when let in a Section 3 covered project area.
- F. To formally contact unions, subcontractors and trade associations to secure their cooperation for this program.
- G. To ensure that all appropriate project area business concerns are notified of pending subcontractural opportunities.
- H. To maintain records, including copies of correspondence, memoranda, etc., which document that all of the above affirmative action steps have been taken.
- I. To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of this Section 3 plan.
- J. To list on Table A, information related to subcontracts to be awarded.
- K. To list on Table B, all projected workforce needs for all phases of this project by occupation, trade, skill level and number of positions.

As officers and representatives of \_\_\_\_\_  
(Name of Contractor)

We, the undersigned have read and fully agree to this Affirmative Action and become a party to the full implementation of this program.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



**CONTRACTOR SECTION 3 PLAN FORMAT continued**

**ESTIMATED PROJECT WORKFORCE BREAKDOWN – TABLE B**

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5
<b>JOB CATEGORY</b>	<b>TOTAL ESTIMATE POSITIONS</b>	<b>NO. OF POSITIONS CURRENTLY OCCUPIED BY PERMANENT EMPLOYEES</b>	<b>NO. POSITIONS NOT CURRENTLY OCCUPIED</b>	<b>NO. POSITIONS TO BE FILLED WITH L.I.P.A.R.</b>
<b>OFFICERS/ SUPERVISORS</b>				
<b>PROFESSIONALS</b>				
<b>TECHNICIANS</b>				
<b>HOUSING SALES/ RENTAL/MGMNT</b>				
<b>OFFICE/CLERICAL</b>				
<b>SERVICE WORKERS</b>				
<b>OTHERS</b>				

**TRADE:**

<b>JOURNEYMEN</b>				
<b>HELPERS</b>				
<b>APPRENTICES</b>				
<b>MAXIMUM NO. TRAINEES</b>				
<b>OTHERS</b>				

**TRADE:**

<b>JOURNEYMEN</b>				
<b>HELPERS</b>				
<b>APPRENTICES</b>				
<b>MAXIMUM NO. TRAINEES</b>				
<b>OTHERS</b>				

**TRADE:**

<b>JOURNEYMEN</b>				
<b>HELPERS</b>				
<b>APPRENTICES</b>				
<b>MAXIMUM NO. TRAINEES</b>				
<b>OTHERS</b>				
<b>TOTAL</b>				

- Low income or very low income persons.
- Refer to Supplemental General Conditions for specific requirements. \_\_\_\_\_  
Company

As officers and representatives of \_\_\_\_\_, we the undersigned,  
(Name of Contractor)  
certify to the following in compliance with 24 CFR part 135, section 3, for work under Contact  
No. \_\_\_\_\_:

(1) Any vacant employment positions, including training positions, that were filled after  
\_\_\_\_\_ was selected to perform the work  
(Name of Contractor)  
under this contact, but before the contract was executed were not filled to circumvent  
\_\_\_\_\_ obligations under 24 CFR part 135; and,  
(Name of Contractor)

(2) Any vacant employment positions, including training positions, that were filled 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 \_\_\_\_\_  
(Name of Contractor)  
obligations under 24 CFR part 135.

CERTIFIED BY:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

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

Name of Business: \_\_\_\_\_  
Address of Business: \_\_\_\_\_  
\_\_\_\_\_

Type of Business:                   = Corporation                   = Partnership  
  = Sole Proprietorship   = Joint Venture

Name and Address of Resident in 51% ownership position:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Attached is the following documentation as evidence of status:**

For person claiming status as resident:

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

For the business entity as applicable:

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

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

- = Current financial statement
- = List of owned equipment
- = Statement of ability to comply
- = List of all contracts for the past

Corporate Seal

\_\_\_\_\_  
Authorizing Name & Signature

Attested by: \_\_\_\_\_  
Name \_\_\_\_\_  
Date \_\_\_\_\_



**SECTION 3 BUSINESS CONCERN AFFIDAVIT  
WORKSHEET**

Will there be any contracts or subcontract let as a result of this project?  
(Please circle your answer)

YES

NO

Will any of the contracts described on the Contracting Plan (FORM-3) be with Section 3 business concerns?  
(Please circle your answer)

YES

NO

If the responses to both questions were yes, please have each of the businesses identified on the Contracting Plan (FORM-3) as Section 3 business concerns, complete FORM-6. A separate FORM-6 should be given to and completed by each Section 3 business concern.

**INSTRUCTIONS FOR COMPLETION OF FORM-6**

- I.
  1. Provide the full legal name of the business.
  2. Provide the current address of the business.
  3. Indicate whether the business is a corporation, a partnership, a sole proprietorship or a joint venture.
  4. Describe briefly the contract or subcontract that the business anticipates undertaking for the project. This should be the same information as in the first column on the Contracting Plan (FORM-3).
- II.
  1. Please indicate whether the business is a Section 3 business concern. A “Section 3 business concern” is a business concern that either:
    - (a) is at least 51% owned by Section 3 residents,
    - (b) Has full-time, permanent employees, at least 30% of whom wither (i) are currently Section 3 residents, or (ii) have been employed by the business for three years or less and were Section 3 residents at the time when the business first hired them,
    - (c) has committed to subcontract in excess of 225% of the dollar award of all subcontracts to be let in connection with the project to businesses that qualify uner (a) or (b) above.
  2. A “business concern” is a business entity formed in accordance with state law and which is licensed under state, county or municipal law to engage in the type of business activity for which it was formed.
  3. A “Section 3 business concern” – with category preference is defined as a Section 3

business concern that either:

- (a) is at least 51% owned by Section 3 residents, all of whom live in the project's service area, or
  - (b) has full-time, permanent employees, at least 30% of whom live in the project's service area and either (i) are currently Section 3 residents, or (ii) have been employed by the business for three years or less and were Section 3 residents at the time when the business first hired them (category 1 business); or
  - (c) is at least 51% owned by Section 3 residents who live in other CHA housing developments not in the project's service area, or whose full-time permanent employees, includes 30% of these Section 3 residents (category 2 business); or
  - (d) HUD YouthBuild programs being carried in the metropolitan area in which Section 3 covered assistance is expended (category 3 business); or
  - (e) Has committed to subcontract in excess of 25% of the dollar award of all subcontracts to be let in connection with the project to business that qualify under (a) or (b) above. (category 4 business).
4. Identify whether the business has been selected to carry out any HUD YouthBuild programs.
- III. The title of the person signing the affidavit should be inserted. The affidavit must be signed, dated, and notarized. The name of the person signing the affidavit must type or legibly print below his/her signature.

**SECTION 3 BUSINESS CONCERN AFFIDAVIT**

The undersigned being duly sworn, on oath, represents, warrants, certifies, deposes and says, under penalty of law, as follows:

**I. BASIC INFORMATION**

The following information is true and correct:

1. Name of Company: \_\_\_\_\_

2. Company Address: \_\_\_\_\_  
\_\_\_\_\_

3. Type of Business (corporation, partnership, partnership, sole proprietorship, joint venture):  
\_\_\_\_\_

4. Project Name and Address(es): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Name/Type of Contract: \_\_\_\_\_

**II. TYPE OF SECTION 3 BUSINESS CONCERN**

For purposes of this section, please refer to the attached instructions for the meanings of the terms “Section 3 Business Concern” and Section 3 Business Concern with Category-Preference” and “HUD YouthBuild Program”. (Please circle your answer.)

1. Is the Company a Section 3 Business Concern?  
YES NO

If “YES”, please go on to question #2. If “NO”, please go directly to Part III.

2. Is the company a Section 3 Business Concern-With Category preference?  
YES NO

If “YES”, please go directly to Part III. If “NO”, please go on to question #3.

3. Has the Company been selected to carry out any HUD Youthbuild Program?  
YES NO

**III. VERIFICATION**

The company hereby agrees to provide, upon request, documents verifying the information provided on this form.

Under penalty of perjury, I certify that I am the \_\_\_\_\_ (Title) of the Company, that I am authorized by the Company to execute this affidavit on its behalf, that I have personal knowledge of the certifications made in this affidavit and that the same are true.

Name (Signature) \_\_\_\_\_

Name (Printed) \_\_\_\_\_

State of Kentucky

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**MBE, SECTION 3 AND EEO  
CONTRACT REQUIREMENTS  
FORMS AND DOCUMENTS**

**CERTIFICATION FOR BUSINESS CONCERNS SEEKING SECTION 3  
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
- Copy of receipt of public assistance
- Copy of evidence of participation in a public assistance program
- Other evidence

**For business entity as applicable:**

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

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

- List of subcontracted Section 3 business(es) and subcontract amount

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

- List of all current full-time employees
- List of employees claiming Section 3 status
- PHA/IHA Residential lease less than 3 years from day of employment
- Other evidence of Section 3 status less than 3 years from date of employment

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

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

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

(Corporate Seal)

Attested by: \_\_\_\_\_

**Preference for Section 3 Business Concerns**

Preference in the award of Section 3 covered contracts that are awarded under a sealed bid (IFB) process shall be provided as follows:

Bids shall be solicited from all businesses (Section 3 business concerns, and Non-Section 3 business concerns). An award shall be made to the qualified Section 3 business concern with the highest priority ranking and with the lowest responsive bid if that bid is not more than "X" higher than the total bid price of the lowest responsive bid from any responsible bidder. "X" is determined as follows:

"X" = lesser of:

When the lowest responsive bid is less Than \$100,000	10% of that bid or \$9,000
When the lowest responsive bid is: At least \$100,000 but less than \$200,000	9% of that bid, or \$16,000
At least \$200,000, but less than \$300,000	8% of that bid, or \$21,000
At least \$300,000, but less than \$400,000	7% of that bid, or \$24,000
At least \$400,000, but less than \$500,000	6% of that bid, or \$25,000
At least \$500,000, but less than \$1 million	5% of that bid, or \$40,000
At least \$1 million, but less than \$2 million	4% of that bid, or \$60,000
At least 2 million, but less than \$4 million	3% of that bid, or \$80,000
At least \$4 million, but less than \$7 million	2% of that bid, or \$105,000
At least \$7 million or more.....	1 ½ % of the lowest responsive bid with no dollar limit

If no responsive bid by a Section 3 business concern meets the requirements of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

**RESIDENT EMPLOYMENT OPPORTUNITY DATA**

**LOUISVILLE METRO HOUSING AUTHORITY**

**ELIGIBILITY FOR PREFERENCE**

**Eligibility for Preference**

A Section 3 resident seeking the preference in training and employment provided by this part shall certify, or submit evidence to the recipient contractor or subcontractor, if requested, that the person is a Section 3 resident, as defined in Section 135.5. (An example of evidence of eligibility for the preference is evidence of receipt of public assistance, or evidence of participation in a public assistance program.)

**Certification for Resident Seeking Section 3 Preference in  
Training and Employment**

I, \_\_\_\_\_, am a legal resident of the \_\_\_\_\_  
\_\_\_\_\_ and meet the income eligibility  
guidelines for a low- or very-low income person as published on  
the reverse.

My Permanent address is: \_\_\_\_\_  
\_\_\_\_\_

I have attached the following documentation as evidence of my  
status:

- |   |  |
|---|--|
| <input type="checkbox"/> Copy of lease  | <input type="checkbox"/> Copy of receipt of public<br>Assistance |
| <input type="checkbox"/> Copy of evidence of<br>participation in a public<br>assistance program | <input type="checkbox"/> Other evidence<br>_____                 |

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

**SECTION 3 INCOME LIMITS**

All residents of public housing developments of the \_\_\_\_\_ Housing Authority qualify as Section 3 residents. Additionally, individuals residing in the \_\_\_\_\_ City of \_\_\_\_\_ who meet the income limits set forth below, can also qualify for Section 3 status.

A picture identification card and proof of current residency is required.

**Eligibility Guideline**

<b>Number in Household</b>	<b>Very Low Income</b>	<b>Low Income</b>
1 individual	22,450	35,950
2 individuals	25,650	41,050
3 individuals	28,850	46,200
4 individuals	32,050	51,300
5 individuals	34,650	55,450
6 individuals	37,200	59,550
7 individuals	39,750	63,650
8 individuals	42,350	67,750



**IV. EQUAL EMPLOYMENT OPPORTUNITY**

- A. Paragraph 39.(j) of Section I, *General Conditions* is hereby deleted and replaced with the following:

The requirements of Executive Order 11246 are set forth as follows:

**Standard Federal Equal Employment Opportunity Construction  
Contract Specifications (Executive Order 11246)**

1. As used in this paragraph:  
**"Covered Area"** means the geographical area described in the specification from which this contract resulted.  
  
**"Director"** means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority.  
  
**"Employer Identification Number"** means the Federal Social Security Number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.  
  
**"Minority"** a person who conforms to the definitions provided.  
  
**"These specifications"** means Paragraph 39.(j) of Section I, *General Conditions*.
2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract, in excess of \$10,000, the provisions of this Section and the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan, approved by the U.S. Department of Labor in the covered area, either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with the Plan for those trades which have union participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor, or subcontractor, participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make good faith efforts to achieve each goal under the Plan in each trade in which it has employees.
4. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractors, or subcontractor' failure to make good faith efforts to achieve the Plan goals and timetables.

5. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7.a through 7.p, below. The goals set forth in the solicitation are the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area.
6. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
7. Neither the provisions of any collective bargaining agreement, nor the failure by a union, with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor from its obligations under the specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
8. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability pursuant to training programs approved by the U.S. Department of Labor.
9. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its efforts to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:
  - a) Ensure and maintain a working environment free of harassment , intimidation, and coercion at all sites, and in all facilities, at which the Contractor's employees are assigned to work; and,
  - b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available and maintain a record of the organizations' responses; and,
  - c) Maintain a current file of the names, addresses, and telephone numbers of all minority and female "off-the-street" applicants and minority or female referrals from unions, recruitment sources, or community organizations, and of what action was taken with respect to each such individual.

If such an individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, the file with the reason therefore, along with whatever additional actions the Contractor may have taken; and,

- d) Provide immediate typewritten notification to the Director when the union(s), with which the Contractor has a collective bargaining agreement, has not referred to the Contractor a minority or female person sent by the Contractor, or when the Contractor has other information that the union(s) referral process has impeded the Contractor's effort to meet its obligations; and,
- e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly includes minorities and women, including upgrading programs and apprenticeship and training programs relevant to the Contractor's employment needs, especially those programs funded or approved by the U.S. Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under the requirements of 7.b, above; and,
- f) Disseminate the Contractor's EEO policy by providing notice of policy to unions and training programs, and requisitioning their cooperation in assisting the Contractor in meeting its EEO obligations; including it in any policy manual and collective bargaining agreement; publicizing it in the company news paper, annual report, etc.; specific review of the policy with all management personnel and with all minority and female employees at least once a year; and, by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed; and,
- g) Review, at least annually, the company's EEO policy and affirmative action obligation under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions, including specific review of these items with on-site supervisory personnel, such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site.

A written record shall be maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter; and,

- h) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female media, and by providing written notification to, and discussing the Contractor's EEO policy with, other contractors and subcontractors with whom the Contractor does, or anticipates doing, business with; and,
- i) Direct its recruitment efforts, both oral and verbal, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations servicing the Contractor's recruitment area and

- employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process; and,
- j) Encourage present minority and female employees to recruit other minority and female persons, and, where reasonable, provide after school, summer, and vacation employment opportunities to minority and female youth, both on the site and in other areas of the Contractor's work force; and,
  - k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR §60-3; and,
  - l) Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities, and encourage those employees to seek, or to prepare for through appropriate training, etc., such opportunities; and,
  - m) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect, by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out; and,
  - n) Ensure that all facilities and company activities are non-segregated, except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes; and,
  - o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations; and,
  - p) Conduct a review, at least annually, of all supervisors' adherence to, and performance under, the Contractor's EEO policy and affirmative action obligations.
10. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7.a through 7.p). The efforts of a contractor association, joint contractor union, contractor community, or other similar group, of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7.a through 7.p of these specifications, provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes good faith efforts to meet its individual goals and timetables, and can

provide documentation which demonstrates the effectiveness of actions taken on the behalf of the Contractor. The obligation to comply, however is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's non-compliance.

11. A single goal for minorities and a separate single goal for women have been established. The Contractor is, however, required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner.

For example, even though the Contractor has achieved its goal for women in general, the Contractor may be in violation of the Executive Order if a specific minority group of women is under utilized.

12. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, national origin, or handicap.
13. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
14. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Employment Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs.

Any Contractor who fails to carry out such sanctions and penalties shall itself be in violation of these specifications and Executive Order 11246, as amended.

15. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those set forth in 7.a through 7.p above, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR §60-4.8.
16. The Contractor shall designate a responsible official to monitor all employment related activities to ensure that the company's EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include, for each employee, the name, address, telephone number, construction trade, union affiliation, if any, employee identification number, if any, Social Security Number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week

in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form, however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

17. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**V. AFFIRMATIVE ACTION REQUIREMENTS**

- A. Paragraph 41, *Indian Preference*, of Section I, *General Conditions* is hereby deleted and replaced with the following:

**Notice Of Requirement For Affirmative Action To Ensure  
Equal Employment Opportunity (Executive Order 11246)**

1. The Offeror's, Bidder's, or Contractor's (henceforth called Contractor) attention is called to the "Equal Opportunity Clause" and the "Standard Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade, on all construction work in the covered area, are as follows:

Goals for minority participation for each trade:	11.2%
Goals for female participation for each trade:	6.9%

These goals apply to all the Contractor's construction work performed in the covered area, whether or not it is Federally assisted.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60.3(a), and its efforts to meet the goals established for the geographical area where this Contract is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor, or from project to project, for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Program within 10 working days of award of any construction subcontract in excess of \$10,000, at any tier, for

construction work under this Contract. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

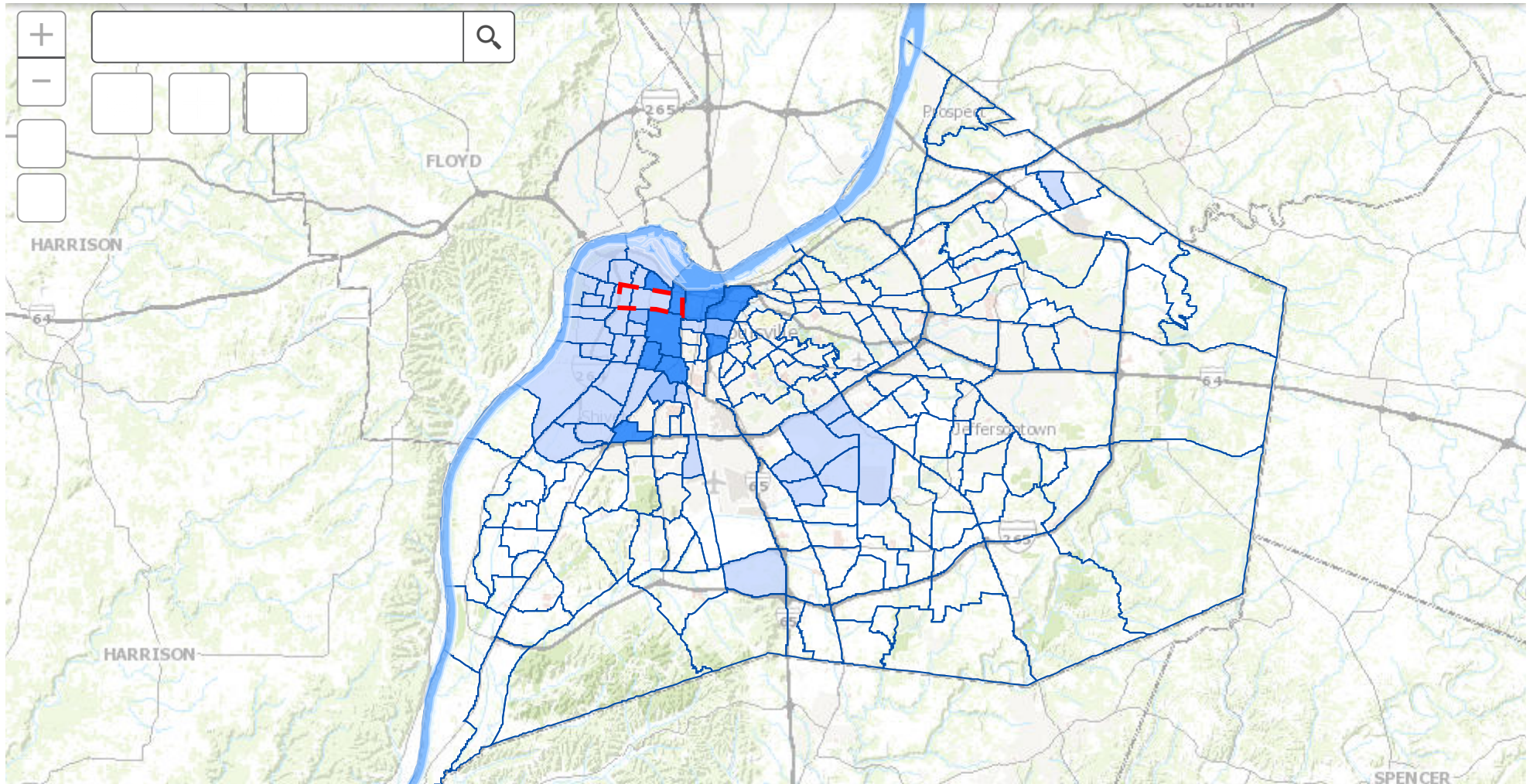
**Attachment 1**  
**Impacted Census Tracts Map**





# Impacted Census Tracts WebApp

with Web AppBuilder for ArcGIS



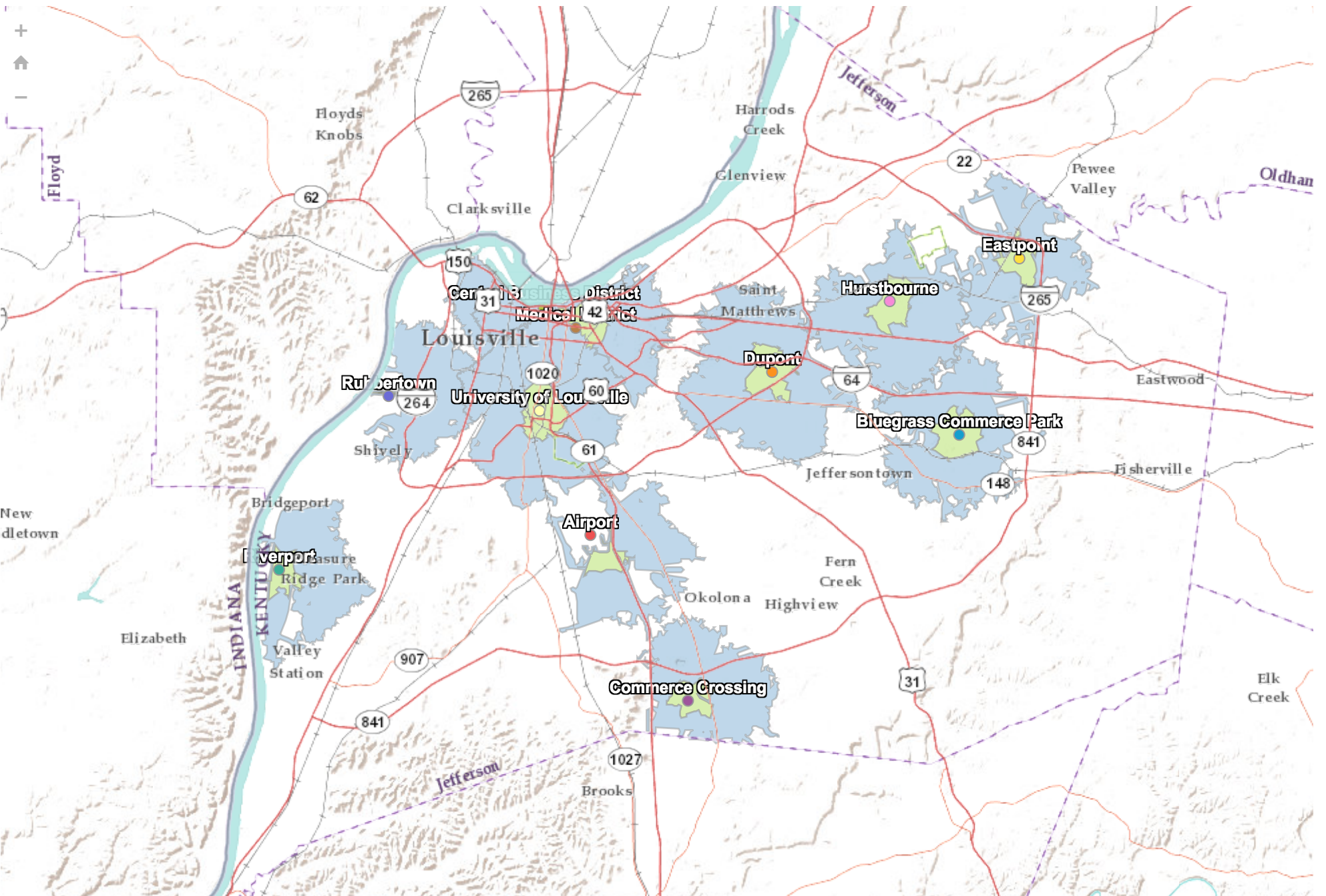
6mi

1,238,750.873 261,997.164 Feet

**Attachment 2**  
**Employment Center Map**

### Louisville CARES - Job ...

▼ Jefferson County Search 🔍



**Attachment 3**  
**LMHA Housing Choice Voucher Program**  
**Administrative Plan,**  
**Chapter 17 – Project-Based Assistance**

# 17. PROJECT-BASED ASSISTANCE

## A. AN OVERVIEW OF THE PROJECT-BASED VOUCHER PROGRAM<sup>10</sup>

A Public Housing Agency, such as the Louisville Metro Housing Authority (LMHA), that already administers a tenant-based Housing Choice Voucher (HCV) Program may opt to utilize up to 20% of the voucher budget authority allocated to it by HUD to operate a Project-Based Voucher (PBV) Program. While tenant-based HCV vouchers are issued to individual Families, the federal assistance associated with project-based vouchers is effectively “attached” to a structure (units within a building).

The Public Housing Agency enters into a Housing Assistance Payment (HAP) contract with an Owner for specified units. In the case of housing to be constructed or rehabilitated, the housing is developed under an Agreement to enter into a Housing Assistance Payment contract (AHAP), and a HAP contract is executed after the Owner completes the construction or rehabilitation of the units. During the term of the HAP contract, the Public Housing Agency makes Housing Assistance Payments to the Owner for units leased and occupied by eligible Families.

## B. SELECTION OF PROPERTIES FOR RECEIPT OF PROJECT-BASED ASSISTANCE

### 1. Selection Process<sup>11</sup>

LMHA will select PBV housing units for project-based assistance through one of the following three methods:

#### a. *Selection Based on Previous Competition*

LMHA may select, without competition, a) a proposal for housing currently assisted with either 4% or 9% LIHTCs, provided that the LIHTC award did not involve any consideration that the project would receive PBV assistance; or b) a proposal for housing assisted under a federal, state, or local government housing assistance, community development, or supportive services program that required competitive selection of proposals (e.g., HOME, Louisville CARES, Louisville Affordable Housing Trust Fund, previous LMHA-issued RFP or RFQ, etc.) where the proposal was selected in accordance with such program’s competitive selection requirements within ten years of the PBV proposal selection date, and that did not consider that the project would receive PBV assistance. Under this subsection, the vouchers can be project-based merely on a vote of the Board of Commissioners.

#### b. *Issuance of a Request for Proposals*

LMHA will issue a Request for Proposals (or Request for Qualifications, as appropriate) inviting interested Owners to participate in the Housing Authority's PBV Program according to its customary Procurement Policy, which incorporates broad public notice of the opportunity, including publication of the public notice in the jurisdiction's local newspaper of general circulation (*Courier-Journal*). The public notice will specify the submission deadline.

The Request for Proposals instrument will describe detailed application and selection information, and will be provided at the request of interested parties. The instrument will also be made available on the Housing Authority's website ([www.lmha1.org](http://www.lmha1.org)).

The Request for Proposals may be limited to a specific site or sites or to geographic areas that meet certain criteria (for example, non-impacted census tracts).<sup>12</sup>

The RFP may include all forms of housing or specific categories (e.g., newly constructed housing, Elderly housing, Disabled housing, etc.).

The RFP may also seek proposals to project-base HUD Veterans Affairs Supportive Housing (VASH) vouchers.<sup>13</sup>

*c. LMHA-Owned Units*

The Housing Authority may select LMHA-owned housing projects for project-based assistance without a competitive process and without HUD approval<sup>14</sup>;

## **2. Selection Requirements**

Regardless of the manner of selection, all projects awarded PBV assistance must meet the standards enumerated in this section.<sup>15</sup>

- a. Special Housing Types.* Although Public Housing Agencies may opt to award project-based assistance to Single-Room Occupancy (SRO) Housing, Congregate Housing, Group Homes, Cooperative Housing, and/or Manufactured Homes, they are not permitted to award such assistance to Shared Housing or Homeownership units or for Manufactured Home Space rental.<sup>16</sup>
- b.* Units on the grounds of a penal, reformatory, medical, mental, or similar public or private institution are not eligible for PBV assistance;

- c. Nursing homes and facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care are not eligible for PBV assistance. However, Public Housing Agencies are permitted to attach PBV assistance for a dwelling unit in an assisted living facility that provides home health care services such as nursing and therapy for residents of the housing;
- d. Units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students of the institution are not eligible for assistance;
- e. Public Housing Agencies are not permitted to attach or pay PBV assistance for a unit occupied by an Owner of the housing. A member of a Cooperative who owns shares in the project assisted under the PBV program shall not be considered an Owner for purposes of participation in the PBV program;
- f. Before a Public Housing Agency selects a specific unit to which assistance is to be attached, the Agency must determine whether the unit is occupied and, if occupied, whether the unit's occupants are eligible for assistance. The Agency must not select or enter into an AHAP or a HAP contract for a unit occupied by a Family ineligible for participation in the PBV Program;
- g. Public Housing Agencies are not permitted to attach or pay PBV assistance for units for which construction or rehabilitation has commenced after proposal submission and prior to execution of an AHAP.

For the purpose of this determination, “construction” begins when excavation or site preparation (including clearing of the land) begins for the housing. “Rehabilitation” begins with the physical commencement of rehabilitation activity on the housing<sup>17</sup>;

- h. A PHA is not permitted to attach or pay PBV assistance to units in any of the following types of subsidized housing:<sup>18</sup>
  - i. A public housing dwelling unit;
  - ii. A unit subsidized with any other form of Section 8 assistance (tenant-based or project-based);
  - iii. A unit subsidized with any governmental rent subsidy (a subsidy that pays all or any part of the rent);
  - iv. A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;

- v. A unit subsidized with Section 236 rental assistance payments (12 U.S.C. 1715z-1). However, the PHA may attach assistance to a unit subsidized with Section 236 interest reduction payments;
  - vi. A unit subsidized with rental assistance payments under Section 521 of the Housing Act of 1949, 42 U.S.C. 1490a (a Rural Housing Service Program). However, the PHA may attach assistance for a unit subsidized with Section 515 interest reduction payments (42 U.S.C. 1485);
  - vii. A Section 202 project for non-elderly persons with disabilities (assistance under Section 162 of the Housing and Community Development Act of 1987, 12 U.S.C. 1701q note);
  - viii. Section 811 project-based supportive housing for persons with disabilities (42 U.S.C. 8013);
  - ix. Section 202 supportive housing for the elderly (12 U.S.C. 1701q);
  - x. A Section 101 rent supplement project (12 U.S.C. 1701s);
  - xi. A unit subsidized with any form of tenant-based rental assistance (as defined at 24 CFR 982.1(b)(2)) (*e.g.*, a unit subsidized with tenant-based rental assistance under the HOME program, 42 U.S.C. 12701 *et seq.*);
  - xii. A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or by the PHA in accordance with HUD requirements. For this purpose, “housing subsidy” does not include the housing component of a welfare payment; a social security payment; or a federal, state, or local tax concession (such as relief from local real property taxes);
- i. A Public Housing Agency may provide PBV assistance only in accordance with HUD subsidy layering regulations (24 CFR 4.13) and other requirements. The subsidy layering review is intended to prevent excessive public assistance for the housing by combining (layering) HAP subsidy under the PBV Program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits. The subsidy layering requirements are not applicable to existing housing. A further subsidy layering review is not required for housing selected as new construction or rehabilitation of housing, if HUD's designee has conducted a review, which included a review of PBV assistance, in accordance with HUD's PBV subsidy layering review guidelines.

A Public Housing Agency is not permitted to enter into an AHAP or a HAP contract until HUD or a housing credit agency approved by HUD has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements.



The HAP contract must contain the Owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements<sup>19</sup>;

- j. Up to 100% of units within any given project may be awarded PBV assistance. However, in furtherance of the Housing Authority's commitment to the development of mixed-income housing, at its sole discretion, LMHA may limit the percentage of units that may be project-based at any given project to some amount less than 100%<sup>20</sup>;
- k. *General Site Selection Standards.*<sup>21</sup> A Public Housing Agency may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an AHAP or a HAP contract for units on the site, unless the Agency has determined that:

  - i. Project-based assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. This determination will be made in a manner consistent with this Administrative Plan and with the Housing Authority's Local Project-Based Voucher Program MTW activity (#48-2017), which can be found in LMHA's MTW Annual Plan. In making this determination, the Housing Authority will consider the following factors:

    - (A) Whether the census tract in which the proposed PBV development will be located is in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community;
    - (B) Whether a PBV development will be located in a census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition;
    - (C) Whether the census tract in which the proposed PBV development will be located is undergoing significant revitalization;
    - (D) Whether state, local, or federal dollars have been invested in the area that has assisted in the achievement of the statutory requirement;
    - (E) Whether new market rate units are being developed in the same census tract where the proposed PBV development will be located and the likelihood that such market rate units will positively impact the poverty rate in the area;

(F) If the poverty rate in the area where the proposed PBV development will be located is greater than 20%, LMHA will consider whether in the past five years there has been an overall decline in the poverty rate;

(G) Whether there are meaningful opportunities for educational and economic advancement in the census tract where the proposed PBV development will be located.

ii. The site is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d(4)) and HUD's implementing regulations at 24 CFR part 1; Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601-3629); and HUD's implementing regulations at 24 CFR parts 100 through 199; Executive Order 11063 (27 FR 11527; 3 CFR, 1959-1963 Comp., p. 652) and HUD's implementing regulations at 24 CFR part 107. The site must meet the section 504 site selection requirements described in 24 CFR 8.4(b)(5).

iii. The site meets the HQS site standards at 24 CFR 982.401(l);

l. *Site Selection Standards Applicable Only to Existing Housing and Rehabilitated PBV Housing.*<sup>22</sup> A site for existing or rehabilitated housing must meet the following site and neighborhood standards. The site must:

i. Be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities and streets must be available to service the site. (The existence of a private disposal system and private sanitary water supply for the site, approved in accordance with law, may be considered adequate utilities.);

ii. Promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;

iii. Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents;

iv. Be so located that travel time and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers is not excessive. While it is important that housing for the elderly not be totally isolated from employment opportunities, this requirement need not be adhered to rigidly for such projects;

m. *Site Selection Standards Applicable Only to Newly Constructed PBV Housing.*<sup>23</sup>  
A site for newly constructed housing must meet the following site and neighborhood standards:

- i. The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the site.
- ii. The site must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents. The site must not be located in an area of minority concentration, unless one of the two following conditions is met:

(A) Sufficient, Comparable Opportunities Standard. Sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration.

- (1) In this context, “sufficient” does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year, that, over a period of several years, will approach an appropriate balance of housing choices within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for low-income minority families and in relation to the racial mix of the locality's population.
- (2) Units may be considered “comparable opportunities,” if they have the same household type (elderly, disabled, family, large family) and tenure type (owner/renter); require approximately the same tenant contribution towards rent; serve the same income group; are located in the same housing market; and are in standard condition.

Application of this “sufficient, comparable opportunities standard” involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for low-income minority families in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with other factors relevant to housing choice:

- (1) A significant number of assisted housing units are available

outside areas of minority concentration.

- (2) There is significant integration of assisted housing projects constructed or rehabilitated in the past 10 years, relative to the racial mix of the eligible population.
- (3) There are racially integrated neighborhoods in the locality.
- (4) Programs are operated by the locality to assist minority families that wish to find housing outside areas of minority concentration.
- (5) Minority families have benefited from local activities (*e.g.*, acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority families outside of areas of minority concentration.
- (6) A significant proportion of minority households has been successful in finding units in non-minority areas under the tenant-based assistance programs.
- (7) Comparable housing opportunities have been made available outside areas of minority concentration through other programs;  
or

- (B) The project is necessary to meet overriding housing needs that cannot be met in that housing market area.

Application of the “overriding housing needs” criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably improving the economic character of the area (a “revitalizing area”). An “overriding housing need,” however, may not serve as the basis for determining that a site is acceptable, if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, religion, sex, national origin, age, familial status, or disability renders sites outside areas of minority concentration unavailable or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.

- iii. The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

- iv. The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.
- v. The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.
- vi. Except for new construction, housing designed for elderly persons, travel time, and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive;

n. *Environmental Review.*<sup>24</sup>

- i. LMHA will not enter into an AHAP or a HAP contract with an Owner, and the Housing Authority, the Owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities under this part, until one of the following occurs:

(A) The responsible entity has completed the environmental review procedures required by 24 CFR part 58, and HUD has approved the environmental certification and HUD has given a release of funds.

For the purpose of environmental review, a “release of funds” means that HUD has approved the Housing Authority’s Request for Release of Funds and Certification by issuing a Letter to Proceed (in lieu of using form HUD-7015.16) that authorizes LMHA to execute an AHAP or, for existing housing, to directly enter into a HAP contract with an Owner of units selected under the PBV Program;<sup>25</sup>

(B) The responsible entity has determined that the project to be assisted is exempt under 24 CFR 58.34 or is categorically excluded and not subject to compliance with environmental laws under 24 CFR 58.35(b); or

(C) HUD has performed an environmental review under 24 CFR part 50 and has notified LMHA in writing of environmental approval of the site.

- ii. HUD will not approve the release of funds for PBV assistance if LMHA, the Owner, or any other party commits funds (*i.e.*, enters an AHAP or otherwise incurs any costs or expenditures to be paid or reimbursed with such funds) before the Housing Authority submits and HUD approves its request for release of funds (where such submission is required).
- iii. LMHA will oblige the Owner to carry out any mitigating measures required as a result of the environmental review;

### **3. Notice of Proposal Selection<sup>26</sup>**

LMHA will give prompt written notice to the party that submitted a selected proposal, and will also give prompt public notice of such selection. Public notice procedures may include publication of a public notice in a local newspaper of general circulation (*Courier-Journal*) and other means that provide broad public notice. LMHA will make documentation regarding the basis for the Housing Authority’s selection of a PBV proposal available for public inspection.

## ***C. REQUIREMENTS FOR REHABILITATED AND NEWLY CONSTRUCTED UNITS***

This Section 17.C applies only to newly constructed or rehabilitated housing and does not apply to existing housing. Newly constructed or rehabilitated housing cannot be selected as existing housing at a later date.<sup>27</sup>

### **1. Agreement to Enter Into a HAP Contract (AHAP)<sup>28</sup>**

The AHAP is the HUD-approved legal instrument through which the Owner agrees to develop the contract units to comply with the Housing Authority’s criteria for decent, safe, and sanitary units, and LMHA agrees that, upon timely completion of such development in accordance with the terms of the AHAP, the Housing Authority will enter into the HAP contract with the Owner for the contract units.

- a. LMHA will not enter into an AHAP if construction or rehabilitation has commenced after proposal submission but before execution of the AHAP. For the purpose of this determination, “construction” begins when excavation or site preparation (including clearing of the land) begins for the housing. “Rehabilitation” begins with the physical commencement of rehabilitation activity on the housing.
- b. LMHA will not enter into an AHAP until both the subsidy layering and environmental reviews are completed, and the Housing Authority has received the

environmental approval.<sup>29</sup>

- c. Required LMHA criteria for decent, safe, and sanitary housing that exceed HUD's Housing Quality Standards will be specified in the AHAP.
- d. At a minimum, the AHAP must describe the following features of the housing to be developed (newly constructed or rehabilitated) and assisted under the PBV Program:
  - i. Site;
  - ii. Location of contract units on site;
  - iii. Number of contract units by area (size) and number of bedrooms and bathrooms;
  - iv. Services, maintenance, or equipment to be supplied by the Owner without charges in addition to the Rent to Owner;
  - v. Utilities available to the contract units, including a specification of utility services to be paid by Owner (without charges in addition to rent) and utility services to be paid by the tenant;
  - vi. Indication of whether or not the design and construction requirements of the Fair Housing Act and implementing regulations at 24 CFR 100.205 and the accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR 8.22 and 8.23 apply to units included in the AHAP. If these requirements are applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the AHAP;
  - vii. Estimated initial Rents to Owner for the contract units; and
  - viii. Description of the work to be performed under the AHAP. If the AHAP is for rehabilitation of units, the work description must include the rehabilitation work write up and, where determined necessary by LMHA, specifications and plans. If the AHAP is for new construction, the work description must include the working drawings and specifications.

## **2. Development Requirements<sup>30</sup>**

The Owner must carry out development work in accordance with the AHAP and with the following requirements:

a. *Labor Standards*

- i. In the case of an AHAP for development of nine or more contract units (whether or not completed in stages), the Owner and the Owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in development of the housing.
- ii. The HUD-approved form of the AHAP shall include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates.
- iii. The Owner and the Owner's contractors and subcontractors must comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other applicable federal labor relations laws and regulations. LMHA will monitor compliance with labor standards.

b. *Equal Opportunity*

i. Section 3 – Training, Employment, and Contracting Opportunities

The Owner must comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135.

ii. Equal Employment Opportunity

The Owner must comply with federal equal employment opportunity requirements of Executive Orders 11246 as amended (3 CFR, 1964-1965 Comp., p. 339), 11625 (3 CFR, 1971-1975 Comp., p. 616), 12432 (3 CFR, 1983 Comp., p. 198) and 12138 (3 CFR, 1977 Comp., p. 393).

c. *Eligibility to Participate in Federal Programs and Activities*

The AHAP and HAP contracts shall include a certification by the Owner that the Owner and other project principals (including the officers and principal members, shareholders, investors, and other parties having a substantial interest in the project) are not on the U.S. General Services Administration list of parties excluded from federal procurement and nonprocurement programs.

d. *Disclosure of Conflict of Interest*

The Owner must disclose any possible conflict of interest that would be a violation of the AHAP, the HAP contract, or HUD regulations.



e. *Broadband Infrastructure*<sup>31</sup>

Any new construction or substantial rehabilitation of a building with more than four rental units must include installation of broadband infrastructure. Broadband infrastructure includes cables, fiber optics, wiring, or other permanent (integral to the structure) infrastructure, including wireless infrastructure, that is capable of providing access to Internet connections in individual housing units, and that meets the definition of “advanced telecommunications capability” determined by the Federal Communications Commission under section 706 of the Telecommunications Act of 1996 (47 U.S.C. 1302).

For the purpose of determining whether the installation of broadband infrastructure is required, the term “substantial rehabilitation” means work that involves:

- i. Significant work on the electrical system of the multifamily rental housing. “Significant work” means complete replacement of the electrical system or other work for which the pre-construction cost estimate is equal to or greater than 75% of the cost of replacing the entire electrical system. In the case of multifamily rental housing with multiple buildings with more than four units, “entire system” refers to the electrical system of the building undergoing rehabilitation; or
- ii. Rehabilitation of the multifamily rental housing in which the pre-construction estimated cost of the rehabilitation is equal to or greater than 75% of the total estimated cost of replacing the multifamily rental housing after the rehabilitation is complete. In the case of multifamily rental housing with multiple buildings with more than four units, the replacement cost must be the replacement cost of the building undergoing rehabilitation.

The installation of broadband infrastructure is not required when the Owner determines and documents the determination that:

- i. The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible;
- ii. The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or
- iii. The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

### **3. Housing Completion**

a. *Documenting Housing Completion*<sup>32</sup>

The Owner must develop and complete the housing in accordance with the AHAP. The AHAP must specify the deadlines for completion of the housing and for submission by the Owner of the required evidence of completion.

The required evidence of completion shall consist of:

i. *Minimum Submission*

At a minimum, the Owner must submit the following evidence of completion to LMHA in the form and manner required by the Housing Authority:

- (A) Owner certification that the work has been completed in accordance with the Housing Authority's criteria for decent, safe, and sanitary housing and all requirements of the AHAP; and
- (B) Owner certification that the Owner has complied with labor standards and equal opportunity requirements in development of the housing.

ii. *Additional Documentation*

At the Housing Authority's discretion, the AHAP may specify additional documentation that must be submitted by the Owner as evidence of housing completion. For example, such documentation may include:

- (A) A certificate of occupancy or other evidence that the units comply with local requirements (such as code and zoning requirements); and
- (B) An architect's certification that the housing complies with:
  - (1) HUD housing quality standards;
  - (2) State, local, or other building codes;
  - (3) Zoning;
  - (4) The rehabilitation work write-up (for rehabilitated housing) or the work description (for newly constructed housing); or
  - (5) Any additional design or quality requirements pursuant to the AHAP.

#### **4. LMHA Acceptance of Completed Units<sup>33</sup>**

When LMHA has received Owner notice that the housing is completed, the Housing Authority will inspect the units to determine if the housing has been completed in accordance with the AHAP, including compliance with the Housing Authority's criteria for decent, safe, and sanitary housing, except that in lieu of LMHA inspection of the units, the Owner may submit the Certificate of Occupancy issued by Louisville Metro Government.<sup>34</sup> LMHA will determine if the Owner has submitted all required evidence of completion.

If LMHA determines that the housing has been completed in accordance with the AHAP and that the Owner has submitted all required evidence of completion, the Housing Authority will submit the HAP contract for execution by the Owner and will then execute the HAP contract.

If the work has not been completed in accordance with the AHAP, LMHA will not enter into a HAP contract with the Owner.

### ***D. THE HAP CONTRACT***

The HAP contract is the HUD-approved legal instrument that describes the terms under which LMHA will make Housing Assistance Payments to the Owner. Housing assistance is paid for contract units leased and occupied by eligible Families during the HAP contract term.

With the exception of single family scattered site projects, a HAP contract covers a single project. If multiple projects exist, each project is covered by a separate HAP contract.<sup>35</sup>

#### **1. Contents of HAP Contract<sup>36</sup>**

The HAP contract must include:

- a. The total number of contract units by number of bedrooms;
- b. Information needed to identify the site and the building or buildings where the contract units are located. The information must include the project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building;
- c. Information needed to identify the specific contract units in each building. The information must include the number of contract units in the building, the

location of each contract unit, the area (square footage) of each contract unit, and the number of bedrooms and bathrooms in each contract unit;

- d.* Services, maintenance, and equipment to be supplied by the Owner without charges in addition to the Rent to Owner;
- e.* Utilities available to the contract units, including a specification of utility services to be paid by the Owner (without charges in addition to rent) and utility services to be paid by the tenant. LMHA requires that the Owner pay for trash collection;
- f.* Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;
- g.* The HAP contract term; and
- h.* The initial Rent to Owner (for the first 12 months of the HAP contract term).

## **2. HAP Contract Certifications<sup>37</sup>**

By execution of the HAP contract, the Owner certifies that at such execution and at all times during the term of the HAP contract:

- a.* All contract units are in good and tenantable condition. The Owner is maintaining the premises and all contract units in accordance with the Housing Authority's criteria for decent, safe, and sanitary housing to include HUD's Housing Quality Standards.
- b.* The Owner is providing all the services, maintenance, equipment, and utilities as agreed to under the HAP contract and the Leases with assisted Families.
- c.* Each contract unit for which the Owner is receiving Housing Assistance Payments is leased to an eligible Family, and the Lease is in accordance with the HAP contract and HUD requirements.
- d.* To the best of the Owner's knowledge, the members of the Family reside in each contract unit for which the Owner is receiving Housing Assistance Payments, and the unit is the Family's only residence.
- e.* The Owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any Family Member residing in a contract unit. This provision may be waived if LMHA determines that approving the unit would provide Reasonable Accommodation for a Family

Member who is a Person with Disabilities.<sup>38</sup>

- f.* The amount of the Housing Assistance Payment is the correct amount due under the HAP contract.
- g.* The Rent to Owner for each contract unit does not exceed rents charged by the Owner for other comparable unassisted units.
- h.* Except for the Housing Assistance Payment and the tenant rent as provided under the HAP contract, the Owner has not received and will not receive any payment or other consideration (from the Family, LMHA, HUD, or any other public or private source) for rental of the contract unit.
- i.* The Family does not own or have any interest in the contract unit. The certification required by this section does not apply in the case of an assisted Family's membership in a cooperative.
- j.* Repair work on a project selected as an existing project that is performed after HAP execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.

### **3. Term of HAP Contract<sup>39</sup>**

The initial term of the HAP contract will not exceed 20 years or be less than one year.

LMHA may agree to enter into an extension at the time of the initial HAP contract term or any time before expiration of the contract, for an additional term of up to 20 years if LMHA determines an extension is appropriate to continue providing affordable housing for low-income families.

LMHA may provide for multiple extensions; however, in no circumstance may such extensions exceed 20 years, cumulatively. Extensions after the initial extension are allowed at the end of any extension term provided that not more than 24 months prior to the expiration of the previous extension contract, the Housing Authority agrees to extend the term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. Extensions after the initial extension term shall not begin prior to the expiration date of the previous extension term. Any extension of the term must be included in the HAP contract.

### **4. Termination of HAP Contract<sup>40</sup>**

a. *Termination by LMHA for Insufficient Funding*

The HAP contract will provide that the term of the Housing Authority's contractual commitment is subject to the availability of sufficient appropriated funding (budget authority) as determined by HUD or by LMHA in accordance with HUD instructions. In this context, "sufficient funding" means the availability of appropriations, and of funding under the Annual Contributions Contract from such appropriations, to make full payment of Housing Assistance Payments payable to the Owner for any contract year in accordance with the terms of the HAP contract.

The availability of sufficient funding must be determined by HUD or by LMHA in accordance with HUD instructions. If it is determined that there may not be sufficient funding to continue Housing Assistance Payments for all contract units and for the full term of the HAP contract, the Housing Authority has the right to terminate the HAP contract by notice to the Owner for all or any of the contract units. Such action by the PHA shall be implemented in accordance with HUD instructions.

b. *Termination by Owner for Rent Reduction to Less Than Initial Rent*

The Owner may terminate the HAP contract, upon notice to LMHA, if the amount of the re-determined Rent to Owner for any contract unit is reduced below the amount of the initial Rent to Owner (Rent to Owner at the beginning of the HAP contract term). In this case, the assisted families residing in the contract units will be offered tenant-based HCV assistance.

c. *HAP Contract Expiration<sup>41</sup>*

Not less than one year before termination of a PBV HAP contract, the Owner must notify LMHA and assisted tenants of the termination. This is true both in the case of expiration of the HAP contract or an Owner's refusal to renew the HAP contract.

If an Owner does not give timely notice of termination, the Owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction as a result of an Owner's inability to collect an increased tenant portion of rent.

An Owner may renew the terminating contract for a period of time sufficient to give tenants one-year advance notice under such terms as HUD may require.

Statutorily-required notices related to contract termination or expiration must be provided in the form prescribed by HUD.

**5. HAP Contract Amendments to Add, Substitute, or Remove Contract Units<sup>42</sup>**

a. *Adding Contract Units to HAP Contract*

At the Housing Authority's discretion, a HAP contract may be amended during the three-year period immediately following the execution date of the HAP contract to add additional PBV contract units in the same project. An amendment to the HAP contract is subject to all PBV requirements (e.g., rents are reasonable), except that a new PBV request for proposals is not required. The anniversary and expiration dates of the HAP contract for the additional units must be the same as the anniversary and expiration dates of the HAP contract term for the PBV units originally placed under HAP contract.

Even if contract units are placed under the HAP contract in stages commencing on different dates, there is a single annual anniversary for all contract units under the HAP contract. The annual anniversary for all contract units is the annual anniversary date for the first contract units placed under the HAP contract. The expiration of the HAP contract for all the contract units completed in stages must be concurrent with the end of the HAP contract term for the units originally placed under HAP contract.

b. *Substituting Units on HAP Contract*

At the Housing Authority's discretion and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same building for a previously covered contract unit. Prior to such substitution, LMHA will inspect the proposed substitute unit and determine the reasonable rent.

c. *Removing Units from the HAP Contract*<sup>43</sup>

Units occupied by Families whose income has increased during their tenancy, resulting in the Tenant rent equaling the Rent to Owner, will be removed from the HAP contract 180 days following the last Housing Assistance Payment on behalf of the Family.

If the project is fully assisted, LMHA may reinstate the removed unit to the HAP contract after the ineligible Family vacates the property. If the project is partially assisted, a different unit may be substituted for the removed unit when the first eligible substitute becomes available.

The anniversary and expirations dates of the HAP contract for the unit must be the same as it was when it was originally placed under the HAP contract. LMHA will refer eligible Families to the Owner according to the Housing Authority's

selection policies.

#### **6. Discontinuation of Housing Assistance Payments when Tenant Rent Equals Rent to Owner<sup>44</sup>**

Housing Assistance Payments will be discontinued should the Tenant Rent increase to such an extent that the Tenant Rent equals the Rent to Owner. The cessation of Housing Assistance Payments at such point will not affect the Family's other rights under its Lease (and is not in and of itself, sufficient grounds for termination of the Lease for good cause<sup>45</sup>), nor will such cessation preclude the resumption of Payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within 180 days following the date of the last Housing Assistance Payment by LMHA. After the 180-day period, the unit shall be removed from the HAP contract.

### ***E. THE ADMISSIONS PROCESS***

The protections for victims of domestic violence, dating violence, sexual assault, or stalking described in section 2.F of this Administrative Plan also apply to admission to the Housing Authority's PBV Program.

#### **1. Filling Vacant Units<sup>46</sup>**

##### *a. Site-Based Waiting Lists*

The Owner may maintain a site-based waiting list at LMHA's discretion. The Owner must promptly notify the LMHA of any vacancy or expected vacancy in a Contract Unit.

Owners will forward applications nearing the top of the site-based waiting list to LMHA, and LMHA will maintain responsibility for eligibility determination.<sup>47</sup> If LMHA determines that there are no eligible applicants on the Owner's site-based waiting list, the Housing Authority will refer eligible Families on LMHA's waiting list.

The Housing Authority will make every reasonable effort to refer promptly a sufficient number of Families for the Owner to fill such vacancies. Both LMHA and the Owner must make reasonable good faith efforts to minimize the likelihood and length of any vacancy.

If any Contract Units have been vacant for a period of 120 or more days since the Owner provided notice of vacancy to LMHA (and notwithstanding the reasonable good faith efforts of LMHA to fill such vacancies), the Housing Authority may give notice to the Owner amending the HAP contract to reduce the number of Contract Units by subtracting the number of Contract Units (by number of bedrooms) that have been vacant for such period.

##### *b. LMHA Waiting Lists*



The Owner must promptly notify the LMHA of any vacancy or expected vacancy in a Contract Unit. After receiving the Owner notice, the Housing Authority will make every reasonable effort to refer promptly a sufficient number of Families for the Owner to fill such vacancies.

The Owner must lease vacant Contract Units only to eligible Families on the Housing Authority's waiting list who are referred by LMHA. The Owner may refer Families for placement on the waiting list.

Both LMHA and the Owner must make reasonable good faith efforts to minimize the likelihood and length of any vacancy. If any Contract Units have been vacant for a period of 120 or more days since the Owner provided notice of vacancy to LMHA (and notwithstanding the reasonable good faith efforts of LMHA to fill such vacancies), the Housing Authority may give notice to the Owner amending the HAP contract to reduce the number of Contract Units by subtracting the number of Contract Units (by number of bedrooms) that have been vacant for such period.

## **2. Waiting List Management<sup>48</sup>**

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a. *Waiting List Structure*

i. Owner-Maintained Site-Based Waiting Lists

LMHA will determine whether to allow owner-maintained site-based waiting lists based on LMHA's assessment of each individual owner's management capacity. Owners will be required to adhere to fair housing, Americans with Disabilities Act and other applicable federal guidelines including, but not limited to: providing public notification of waiting list opening and closings; providing community-wide notice of housing availability; providing reasonable accommodations; and, conducting the application process in compliance with LMHA's Language Access Plan.

ii. LMHA-Maintained Waiting Lists

LMHA will use a separate waiting list for admission to PBV units. The Housing Authority will offer to place applicants for tenant-based assistance on the waiting list for PBV assistance. LMHA may establish separate site-based waiting lists at its discretion. LMHA will place Families referred by the PBV Owner on either its central PBV waiting list or on one or more separate site-based waiting lists, as requested.

Families who are participants in the Housing Authority's tenant-based HCV Program are eligible for the PBV Program, and may be placed on one or more PBV unit waiting lists. LMHA will not determine eligibility for current tenant-based HCV Program participants before offering PBV assistance as eligibility for these Families was determined upon original admission to the tenant-based HCV Program.

b. *Admission Preferences*

i. Use of Tenant-Based HCV Program Preferences

The admission preferences utilized in the Housing Authority's tenant-based HCV Program will also be used in its PBV Program.

ii. Former Beecher Terrace Residents

An admission preference will be given to eligible former Beecher Terrace public housing Families for PBV units that are identified as Beecher Terrace replacement units. LMHA will maintain a list of such eligible Families.

iii. In-Place Families

An "in-place family" is a PBV-eligible Family residing in a proposed contract unit on the proposal selection date.

In order to minimize displacement of in-place families, if a unit to be placed under contract that is either an existing unit or one requiring rehabilitation is

occupied by an eligible Family on the proposal selection date, the in-place Family will be placed on the Housing Authority's waiting list (if the Family is not already on the list) and, once its continued eligibility is determined, given an absolute selection preference and referred to the project Owner for an appropriately sized PBV unit in the project. The Family must be eligible for the PBV Program on the date of proposal selection.

However, LMHA may deny assistance consistent with section 3.B of this Administrative Plan, "Grounds for Denial."

*c. Referrals to Owner from Waiting List*

i. Units with Special Accessibility Features

In selecting Families to occupy PBV units with special accessibility features for Persons with Disabilities, LMHA will first refer Families who require such accessibility features to the Owner (see 24 CFR 8.26 and 100.202).

ii. Units in Elderly, Disabled, and Elderly/Disabled Buildings

Elderly, Disabled, and Elderly/Disabled Families will be referred to the Owners of elderly, disabled, and elderly/disabled buildings, respectively.

In the case of an elderly building, if there are no Elderly Families on the waiting list, Near-Elderly Families will be referred to the Owner. If there are no Elderly or Near-Elderly Families on the waiting list, the next Family on the waiting list will be referred to the Owner.

In the case of an elderly/disabled building, if there are no Elderly or Disabled Families on the waiting list, Near-Elderly Families will be referred to the Owner. If there are no Elderly, Disabled, or Near-Elderly Families on the waiting list, the next Family on the waiting list will be referred to the Owner.

In the case of a disabled building, if there are no Disabled Families on the waiting list, the next Family on the waiting list will be referred to the Owner.

iii. Units That Offer Services

In selecting Families for PBV units that offer services, LMHA will give preference to Disabled Families who need services offered at a particular project. However, preferences will not be granted to persons with a specific disability.

The preference is limited to the population of Families (including individuals) with disabilities that significantly interfere with their ability to obtain and maintain themselves in housing; who, without appropriate supportive services, will not be able to obtain or maintain themselves in housing; and for whom such services cannot be provided in a nonsegregated setting.

Disabled residents will not be required to accept the particular services offered at the project.

In advertising the project, the Owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible Persons with Disabilities who may benefit from services provided in the project.

*d. Offer of PBV Assistance*

If a Family refuses the Housing Authority's offer of PBV assistance, such refusal does not affect the Family's position on the tenant-based HCV Program waiting list.

If a PBV Owner rejects a Family for admission to the Owner's PBV units, such rejection by the Owner does not affect the Family's position on the tenant-based HCV Program waiting list.

LMHA will not take any of the following actions against an Applicant who has applied for, received, or refused an offer of PBV assistance:

- i. Refuse to list the Applicant on the LMHA waiting list for tenant-based HCV Program assistance;
- ii. Deny any admission preference for which the Applicant is currently qualified;
- iii. Change the Applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection under the Housing Authority's selection policy;
- iv. Remove the Applicant from the waiting list for tenant-based HCV Program assistance.

## ***F. LEASING A UNIT***

### **1. Briefing Newly-Accepted Families<sup>49</sup>**

*a. Oral Briefing*

When a Family accepts an offer of PBV assistance, LMHA will give the family an oral briefing that describes how the PBV Program works and explains Family and Owner responsibilities.

*b. Information Packet*

LMHA will give the Family a packet that includes information on the following subjects:

- i. How LMHA determines the Total Tenant Payment for a Family;
- ii. Family obligations under the Program;

iii. Applicable fair housing information; and

iv. A list of accessible PBV units.

c. *Providing Information for Persons with Disabilities*

If the Family Head or spouse is a disabled person, LMHA will take appropriate steps to assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet, including in alternative formats.

d. *Providing Information for Persons with Limited English Proficiency*

LMHA will take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with obligations contained in Title VI of the Civil Rights Act of 1964 and Executive Order 13166. The Housing Authority's "Language Action Plan for Persons with Limited English Proficiency" can be found in Appendix 4 of this Administrative Plan.

## 2. **Tenant Screening**<sup>50</sup>

i. *Tenant Screening by LMHA*

LMHA will deny assistance consistent with the grounds for denial described in Section 3.B of this Administrative Plan.

ii. *Tenant Screening by Owner*<sup>51</sup>

During the term of the HAP contract, the Owner must lease contract units only to eligible Families selected and referred by LMHA from the Housing Authority's waiting list. The Owner is responsible for adopting written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to Program eligibility and an Applicant's ability to perform the Lease obligations.

The Owner is responsible for any additional suitability screening of prospective Tenants beyond that conducted by LMHA in accordance with Section 3.B of this Plan. Such screening must be done in a manner consistent with Section 6.H of this Plan. In furtherance of Owner suitability screening, the Housing Authority will disclose Applicant Family information to the extent required by HUD as described in Section 6.H.

The Owner must promptly notify in writing any rejected Applicant of the grounds for such rejection.

In screening prospective Tenants, the Owner must comply with the protections for victims of domestic violence, dating violence, sexual assault, or stalking described in section 2.F of this Administrative Plan.

### 3. The Lease<sup>52</sup>

- a. The Tenant and the Owner must enter a written Lease for the unit. The Lease must be executed by the Owner and the Tenant.
- b. The Tenant must have legal capacity to enter a Lease under state and local law. “Legal capacity” means that the Tenant is bound by the terms of the Lease and may enforce the terms of the Lease against the Owner.
- c. If the Owner uses a standard Lease form for rental to unassisted Tenants in the locality or the premises, the Lease must be in such standard form, unless LMHA determines that the Owner’s standard Lease does not conform with state or local law. If the Owner does not use a standard Lease form for rental to unassisted tenants, the Owner may use another form of Lease, such as an LMHA model Lease.
- d. In all cases, the Lease must include the HUD-required tenancy addendum. The terms of the tenancy addendum will prevail over other provisions of the Lease. The tenancy addendum must include, word-for-word, all provisions required by HUD.<sup>53</sup>
- e. LMHA may review the Owner's Lease form to determine if the Lease complies with state and local law. The Housing Authority may decline to approve the tenancy if it determines that the Lease does not comply with state or local law.
- f. The Lease must specify all of the following:
  - i. The names of the Owner and the Tenant;
  - ii. The unit rented (address, apartment number, if any, and any other information needed to identify the leased Contract Unit);
  - iii. The term of the Lease (initial term and any provision for renewal);
  - iv. The Tenant Rent to Owner is subject to change during the term of the Lease in accordance with HUD requirements and any regulatory flexibilities described in the Housing Authority’s HUD-approved MTW Annual Plan;
  - v. A specification of what services, maintenance, equipment, and utilities are

to be provided by the Owner; and

vi. The amount of any charges for food, furniture, or supportive services.

*g. Changes to the Lease*

- i. If the Tenant and the Owner agree to any change in the Lease, such change must be in writing, and the Owner must immediately give LMHA a copy of all such changes.
- ii. The Owner must notify LMHA in advance of any proposed change in Lease requirements governing the allocation of Tenant and Owner responsibilities for utilities. Such changes may be made only if approved by the Housing Authority and in accordance with the terms of the Lease relating to its amendment. LMHA will redetermine the reasonable rent based on any change in the allocation of responsibility for utilities between the Owner and the Tenant, and the redetermined reasonable rent will be used in the calculation of Rent to Owner from the effective date of the change.

*h. Lease Term*

- i. The initial Lease term must be for at least one year, and the Lease must provide for automatic renewal after the initial term of the Lease. The Lease may provide either:
  - (A) For automatic renewal for successive definite terms (e.g., month-to-month or year-to-year); or
  - (B) For automatic indefinite extension of the Lease term.
- ii. The term of the Lease terminates if any of the following occurs:
  - (A) The Owner terminates the Lease for good cause;
  - (B) The Tenant terminates the Lease;
  - (C) The Owner and the Tenant agree to terminate the Lease;
  - (D) LMHA terminates the HAP contract; or
  - (E) LMHA terminates assistance for the Family.

*i. Lease Provisions Governing Absence from the Unit*

The Lease may specify a maximum period of Family absence from the unit that may be shorter than the maximum period permitted by LMHA policy. See Section 1.D.3.h of this Plan.



The unit will not be terminated from the HAP contract based solely on the grounds that the Family is absent for longer than the maximum period permitted.

*j. Owner Termination of Lease and/or Tenancy*<sup>54</sup>

The permissible grounds for Owner termination of the Lease and/or tenancy are described in Section 12.A.2 of this Plan except that in the PBV Program, “good cause” does not include a business or economic reason or desire to use the unit for an individual, family, or non-residential rental purpose.

The provisions for the protection of victims of domestic violence, dating violence, sexual assault, or stalking described in Section 2.F of this Plan apply to Owner Termination of the Lease, to Owner Termination of Tenancy, and to Eviction.

**4. Security Deposits**<sup>55</sup>

The Owner may collect a security deposit from the Tenant. However, LMHA prohibits security deposits in excess of private market practice or in excess of amounts charged by the Owner to unassisted Tenants.

When the Tenant moves out of the Contract Unit, the Owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the Lease, as reimbursement for any unpaid Tenant rent, damages to the unit, or other amounts that the Tenant owes under the Lease.

The Owner must give the Tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the Owner, the Owner must promptly refund the full amount of the balance to the Tenant.

If the security deposit is not sufficient to cover amounts the Tenant owes under the Lease, the Owner may seek to collect the balance from the Tenant. However, LMHA has no liability or responsibility for payment of any amount owed by the Family to the Owner.

***G. CONTINUED ASSISTANCE***

**1. Family Right to Terminate Lease and Retain Assistance**<sup>56</sup>

The Family may terminate the assisted Lease at any time after the first year of occupancy. The Family must give the Owner advance written notice of intent to vacate (with a copy to LMHA) in accordance with the Lease.

If the Family elects to terminate the Lease in this manner, LMHA will offer the Family the opportunity for continued tenant-based rental assistance, in the form of either assistance under the tenant-based HCV Program or other comparable tenant-based rental assistance.

If the Family terminates the assisted Lease before the end of one year, the Family relinquishes the opportunity for continued tenant-based assistance.

Before providing notice to terminate the Lease, the Family must contact LMHA to request comparable tenant-based rental assistance if the Family wishes to move with continued assistance. If tenant-based HCV assistance or other comparable tenant-based rental assistance is not immediately available upon termination of the Family's Lease of a PBV unit, the Housing Authority will give the Family priority to receive the next available opportunity for continued tenant-based rental assistance.

In the case of a Family or Family Member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, where the move is needed to protect the health or safety of the Family or Family Member, or in the case of a Family Member who has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the Family's request to move, the Family may move with continued tenant-based rental assistance even if the move occurs before the end of the first year of the Lease.

LMHA will not terminate assistance if the Family, with or without prior notification to the Housing Authority, moves out of a unit in violation of the Lease, if such move occurs to protect the health or safety of a Family Member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit, or if any Family Member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the Family's request to move.

If a Family breaks up as a result of an occurrence of domestic violence, dating violence, sexual assault, or stalking, LMHA will offer the victim the opportunity for continued tenant-based rental assistance.

## **2. Families Occupying a Wrong-Size or Accessible Unit<sup>57</sup>**

If LMHA determines that the Family is occupying a Wrong-Size Unit<sup>58</sup> or a unit with accessibility features that the Family does not require, and the unit is needed by a Family that requires the accessibility features, LMHA will promptly notify the Family and the Owner of this determination, and of the Housing Authority's offer of continued assistance for the Family in another unit.

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The Family will be offered the following options (as available):

- a. PBV assistance (in the same project or in another project);
- b. A public housing unit within an LMHA-managed development; or
- c. A tenant-based HCV Program voucher.

If the Family selects PBV assistance or a public housing unit or refuses to accept any offer of continued assistance, and the Family does not move out of the Wrong-Size or accessible unit within 90 calendar days, LMHA will terminate the Housing Assistance Payments for the Wrong-Size or accessible unit and remove the unit from the HAP contract.

If the Family selects tenant-based HCV assistance, the Housing Assistance Payments for the Wrong-Size or accessible unit will terminate at the earlier of the expiration of the term of the Family's voucher (including any extension granted by LMHA) or the date upon which the Family vacates the unit. If the Family does not move out of the Wrong-Size or accessible unit by the expiration date of the term of the Family's voucher, LMHA will remove the unit from the HAP contract.

## ***H. RENT TO OWNER***

### **1. Amount of Rent to Owner**

#### *a. Amount of Rent to Owner for All Units Excluding Certain Tax Credit Units*

Except for certain tax credit units as provided in Section 17.H.1.b of this Plan, the Rent to Owner must not exceed the lowest of:

- i. An amount determined by LMHA, not to exceed the greater of 110% of the applicable Metropolitan Area Fair Market Rent (MAFMR) or 110% of the Small Area Fair Market Rent (SAFMR) for the unit bedroom size minus any utility allowance. The Owner may elect to use the Housing Authority's utility allowance schedule, or site-specific utility allowances in accordance with the provisions of Notice H 2015-04 or successor notices, subject to LMHA's review and approval prior to implementation;
- ii. The reasonable rent (unless LMHA has elected within the HAP contract not to reduce rents below the initial Rent to Owner and, upon redetermination of the Rent to Owner, the reasonable rent would result in a rent below the initial rent); or
- iii. The rent requested by the Owner.

#### *b. Amount of Rent to Owner for Certain Tax Credit Units*

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i. Applicability

This alternate method for determining the amount of Rent to Owner for certain tax credit units applies only to Contract Units that meet all four of the following requirements:

(A) The Contract Unit receives a low-income housing tax credit under the Internal Revenue Code of 1986 (see 26 U.S.C. 42);

(B) The Contract Unit is not located in a qualified census tract;

A “qualified census tract” is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which:

(1) At least 50% of households have an income of less than 60% of Area Median Gross Income (AMGI); or

(2) Where the poverty rate is at least 25% and where the census tract is designated as a qualified census tract by HUD;

(C) In the same building, there are comparable tax credit units of the same unit bedroom size as the Contract Unit and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and

(D) The tax credit rent exceeds the applicable MAFMR or SAFMR as determined in accordance with Section 17.H.1.a of this Plan.

The “tax credit rent” is the rent charged for comparable units of the same bedroom size in the building that also receive the low-income housing tax credit but do not have any additional rental assistance (*e.g.*, additional assistance such as tenant-based HCV assistance).

ii. Method for Determining Amount of Rent to Owner

The Rent to Owner must not exceed the lowest of:

(A) The tax credit rent minus any applicable utility allowance as determined in accordance with Section 17.H.1.a of this Plan;

(B) The reasonable rent (unless LMHA has elected within the HAP contract not to reduce rents below the initial Rent to Owner and, upon redetermination of the Rent to Owner, the reasonable rent would result in a rent below the initial rent); or

(C) The rent requested by the Owner.

## 2. Initial and Redetermined Rents to Owner

### a. *Determining the Initial Rent to Owner*<sup>60</sup>

The amount of the initial Rent to Owner is established at the beginning of the HAP contract term. For rehabilitated or newly constructed housing, the AHAP states the estimated amount of the initial Rent to Owner, but the actual amount of the initial Rent to Owner is established at the beginning of the HAP contract term.

When determining the initial Rent to Owner, LMHA will use the greater of 110% of the most recently published Metropolitan Area Fair Market Rents (MAFMR) or 110% of the Small Area Fair Market Rents (SAFMR) in effect. LMHA will allow the use of the utility allowance schedule in effect at execution of the HAP contract, or at the Owner's request, a site-specific utility allowance calculated in accordance with the provisions of Notice H 2015-04 or successor notices, subject to LMHA's review and approval prior to implementation. At its discretion, the Housing Authority may use the amounts in effect at any time during the 30-day period immediately before the beginning date of the HAP contract.

### b. *Redetermining the Rent to Owner*<sup>61</sup>

#### i. When the Rent to Owner Will Be Redetermined

LMHA will redetermine the Rent to Owner:

(A) Upon the Owner's request; or

(B) When there is a 10% decrease in the published FMR.

#### ii. Use of Fair Market Rents and Utility Allowances in Rent to Owner Redeterminations

When redetermining the Rent to Owner, LMHA will use the greater of 110% of the most recently published Metropolitan Area Fair Market Rents (MAFMR) or 110% of the Small Area Fair Market Rents (SAFMR) in effect. LMHA will allow the use of the utility allowance schedule in effect at the time of redetermination, or at the Owner's request, a site-specific utility allowance calculated in accordance with the provisions of Notice H 2015-04 or successor notices, subject to LMHA's review and approval prior to implementation. At its discretion, LMHA may use the amounts in effect at any time during the 30-day period immediately before the redetermination date.

#### ii. Notice of Rent Redetermination

Rent to Owner is redetermined by written notice by LMHA to the Owner specifying the amount of the redetermined rent. The Housing Authority's

notice of the rent adjustment constitutes an amendment of the Rent to Owner specified in the HAP contract.

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ii. Rent Increases

The Owner must request an increase in the Rent to Owner at least 60 calendar days before the annual anniversary date of the HAP contract by written notice to LMHA. The request must be submitted in the form and manner required by the Housing Authority.

The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year. The adjusted Rent to Owner amount applies for the period of 12 calendar months from the annual anniversary of the HAP contract.

LMHA will not approve annual Rent to Owner requests that exceed 2% of the current Rent to Owner.<sup>62</sup>

LMHA will not approve and the Owner may not receive any increase of Rent to Owner until and unless the Owner has complied with all requirements of the HAP contract, including compliance with the Housing Authority's criteria for decent, safe, and sanitary housing. The Owner will not receive any retroactive increase of rent for any period of noncompliance.

iii. Rent Decreases

If at rent redetermination, LMHA determines that the Rent to Owner must be decreased, then the Rent to Owner must be decreased regardless of whether the Owner requested a rent adjustment.

The Rent to Owner shall not be reduced below the initial Rent to Owner for dwelling units under the initial HAP contract, except:

- (A) To correct errors in calculations in accordance with HUD requirements;
- (B) If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required to prohibit excess public assistance to the units; or
- (C) If a decrease in Rent to Owner is required based on changes in the allocation of responsibility for utilities between the Owner and the Tenant.

c. *Determination of Rent to Owner for LMHA-Owned Units*

For LMHA-owned PBV units, LMHA will determine the initial Rent to Owner and all redeterminations of Rent to Owner.



### 3. Reasonable Rent<sup>63</sup>

#### a. *When the Reasonable Rent Will Be Determined*

LMHA will determine the reasonable rent:

- i. At the beginning of the initial HAP contract term;
- ii. Whenever there is a 10% decrease in the published Fair Market Rents in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR in effect one year before the contract anniversary;
- iii. Whenever LMHA approves a change in the allocation of responsibility for utilities between the Owner and the Tenant;
- iv. Whenever the HAP contract is amended to substitute a different Contract Unit in the same building or project; and
- v. Whenever there is any other change that may substantially affect the reasonable rent.

#### b. *How the Reasonable Rent Will Be Determined*

##### i. Comparability Analysis

The reasonable rent of a Contract Unit must be determined by comparison to rent for other comparable unassisted units. In determining the reasonable rent, LMHA will consider factors that affect market rent, such as:

- (A) The location, quality, size, unit type, and age of the Contract Unit; and
- (B) Amenities, housing services, maintenance, and utilities to be provided by the Owner.

For each unit, the comparability analysis will use at least three comparable units in the private unassisted market, which may include comparable unassisted units in the premises or project.

LMHA will retain documentation of the comparability analysis that shows how the reasonable rent was determined, including major differences between the Contract Units and comparable unassisted units.

The comparability analysis may be performed by LMHA staff or by another qualified person or entity. A person or entity that conducts the comparability

analysis and any Housing Authority staff or contractor engaged in determining the Housing Assistance Payment based on the comparability analysis may not have any direct or indirect interest in the property.

ii. Owner Certification of Comparability

By accepting each monthly Housing Assistance Payment from LMHA, the Owner certifies that the Rent to Owner is not more than rent charged by the Owner for comparable unassisted units in the premises. The Owner must give the Housing Authority information requested by LMHA on rents charged by the Owner for other units in the premises or elsewhere.

iii. LMHA-Owned Units

For LMHA-owned units, the amount of the reasonable rent will be determined by LMHA.

**4. Effect of Other Subsidy on Rent to Owner<sup>64</sup>**

*a. Units Assisted Under the HOME Program*

For Contract Units assisted under the HOME program, rents may not exceed rent limits as required by the HOME program (24 CFR 92.252).

*b. Units Subsidized Through Other Federal Programs*

For Contract Units assisted under the following federal programs, the Rent to Owner may not exceed the subsidized rent (basic rent) as determined in accordance with requirements for the applicable federal program:

- i. An insured or non-insured Section 236 project;
- ii. A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;
- iii. A Section 221(d)(3) below market interest rate (BMIR) project;
- iv. A Section 515 project of the Rural Housing Service;
- v. Any other type of federally subsidized project specified by HUD.

*c. Subsidy Layering Requirements*

Rent to Owner may not exceed any limitation required to comply with HUD subsidy layering requirements. At the direction of HUD or its designee, LMHA will reduce the Rent to Owner because of other governmental subsidies, including tax credits or tax exemptions, grants, or other subsidized financing.

## ***I. PAYMENTS TO OWNER***

### **1. Housing Assistance Payments for Occupied Contract Units<sup>65</sup>**

Unless the Owner and LMHA agree on a later date, on or about the first day of each month for which payment is due, LMHA will make a Housing Assistance Payment to the Owner for each Contract Unit that complies with the Housing Authority's criteria for decent, safe, and sanitary housing and is leased to and occupied by an eligible Family in accordance with the HAP contract. To receive Housing Assistance Payments in accordance with the HAP contract, the Owner must comply with all the provisions of the HAP contract. Unless the Owner complies with all the provisions of the HAP contract, the Owner does not have a right to receive Housing Assistance Payments.

The monthly Housing Assistance Payment by LMHA to the Owner for a Contract Unit leased to a Family is the Rent to Owner minus the Tenant Rent (Total Tenant Payment minus the utility allowance).

Except for discretionary vacancy payments, LMHA will not make any Housing Assistance Payment to the Owner for any month after the month when the Family moves out of the unit (even if household goods or property are left in the unit).

### **2. Vacancy Payments<sup>66</sup>**

If an assisted Family moves out of the unit, the Owner may keep the Housing Assistance Payment payable for the calendar month when the Family moves out ("move-out month"). However, the Owner may not keep the payment if LMHA determines that the vacancy is the Owner's fault.

At the Housing Authority's discretion, the HAP contract may provide for vacancy payments to the Owner for an LMHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month. The vacancy payment to the Owner for each month of the maximum two-month period would be determined by LMHA, and cannot exceed the monthly Rent to Owner under the assisted Lease, minus any portion of the rental payment received by the Owner (including amounts available from the Tenant's security deposit). Any vacancy payment may cover only the period the unit remains vacant.

LMHA will only make vacancy payments to the Owner if:

- a. The Owner submits a request for vacancy payment in the form and manner required by LMHA;
- b. The Owner gives LMHA prompt, written notice certifying that the Family has vacated the unit and containing the date when the Family moved out (to the best of the Owner's knowledge and belief);
- b. The Owner certifies that the vacancy is not the fault of the Owner and that the unit was vacant during the period for which payment is claimed;
- c. The Owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and
- d. The Owner provides any additional information required and requested by LMHA to verify that the Owner is entitled to the vacancy payment or to determine the amount of the vacancy payment.

### **3. Tenant Rent<sup>67</sup>**

The tenant rent is the portion of the Rent to Owner paid by the Family. It is determined by LMHA, and is equal to the Total Tenant Payment minus the utility allowance. The tenant rent is payment for all housing services, maintenance, equipment, and utilities to be provided by the Owner without additional charge to the Tenant, in accordance with the HAP contract and Lease. The Owner may not demand or accept any rent payment from the Tenant in excess of the tenant rent, and must immediately return any excess payment to the Tenant.

Any changes in the amount of the tenant rent will be effective on the date stated in a notice by LMHA to the Family and the Owner.

The Family is not responsible for payment of the portion of the Rent to Owner covered by the Housing Assistance Payment under the HAP contract. The Owner may not terminate the tenancy of an assisted Family for nonpayment of the LMHA Housing Assistance Payment.

LMHA is responsible only for making Housing Assistance Payments to the Owner on behalf of a Family in accordance with the HAP contract. The Housing Authority is not responsible for paying the tenant rent, or for paying any other claim by the Owner.

LMHA will not use Housing Assistance Payments or other program funds (including any administrative fee reserve) to pay any part of the tenant rent or to pay any other claim by the Owner. The Housing Authority will not make any payment to the Owner for any damage to the unit, or for any other amount owed by a Family under the Family's Lease or otherwise.

If the amount of the utility allowance exceeds the total tenant payment, the PHA shall pay the amount of such excess to the Family as a reimbursement for tenant-paid utilities (“utility reimbursement”) and the tenant rent to the owner shall be zero.

#### **4. Other Fees and Charges<sup>68</sup>**

Except in assisted living developments receiving PBV assistance, the Owner may not require the Tenant or Family Members to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

In assisted living developments receiving project-based assistance, Owners may charge Tenants, Family Members, or both for meals or supportive services. These charges may not be included in the Rent to Owner, nor may the value of meals and supportive services be included in the calculation of reasonable rent. Non-payment of such charges is grounds for termination of the Lease by the Owner in an assisted living development.

The owner may not charge the Tenant or Family Members extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

### ***J. ENSURING UNITS ARE DECENT, SAFE, AND SANITARY***

#### **1. Criteria for Decent, Safe, and Sanitary Units<sup>69</sup>**

The Housing Authority’s PBV Program will follow the physical condition criteria for decent, safe, and sanitary units described for its tenant-based HCV Program in Section 13.0 of this Administrative Plan with the following exceptions:

- a. The physical condition standards at 24 CFR 5.703 do not apply to the PBV program; and
- b. The lead-based paint requirements at 24 CFR 982.401(j) do not apply to the PBV program;<sup>70</sup>

#### **2. Types of Inspections<sup>71</sup>**

##### *a. Pre-Selection Inspections*

LMHA will examine the proposed site and inspect all existing housing units

before the proposal selection date. Existing units must substantially comply with the Housing Authority's criteria for decent, safe, and sanitary housing before the proposal selection date.

*b. Pre-HAP Contract Execution Inspections*

LMHA will inspect all housing units before executing the HAP contract, and will not enter into a HAP contract covering any unit that does not fully comply with the Housing Authority's criteria for decent, safe, and sanitary housing.

For new construction and rehabilitated units, LMHA will accept the Certificate of Occupancy as evidence that all units meet the Housing Authority's criteria for decent, safe, and sanitary housing in lieu of conducting an inspection.<sup>72</sup>

*c. Periodic Inspections*

LMHA will inspect all units annually. All units within a single building will be inspected concurrently.<sup>73</sup>

In the case of mixed-finance properties assisted with project-based vouchers (authorized at 42 U.S.C. 1437f(o)(13)) that is subject to an alternative inspection, LMHA may rely upon the alternate inspection. However, all units must be inspected, either by LMHA or through an alternative inspection process, at least once per year.

*d. Complaint Inspections*

LMHA will conduct complaint inspections of contract units when requested by a tenant to determine whether or not the contract unit complies with the Housing Authority's criteria for decent, safe, and sanitary housing and to verify that the Owner is providing maintenance, utilities, and other services in accordance with the HAP contract.

*e. Follow-up Inspections*

LMHA will conduct follow-up inspections needed to determine if the Owner (or, if applicable, the Family) has corrected any violation of the Housing Authority's criteria for decent, safe, and sanitary housing, and to determine the basis for exercise of contractual and other remedies for Owner or Family violation of the decent, safe, and sanitary housing criteria.

*f. Quality Control Inspections*

When conducting supervisory quality control inspections, LMHA will include a representative sample of both tenant-based and project-based units.

*g. Inspections of LMHA-Owned Units*

In the case of LMHA-owned units, required inspections will be performed by LMHA. LMHA will not charge the Family any fee for the inspection services.

LMHA will take all necessary actions in response to inspection reports, including exercise of contractual remedies for violation of the HAP contract by the Public Housing Agency owner.

**3. Responsibility for Condition of Contract Units<sup>74</sup>**

*a. Owner Responsibility*

The Owner must maintain and operate the contract units and premises in accordance with the Housing Authority's criteria for decent, safe, and sanitary housing, including performance of ordinary and extraordinary maintenance. The Owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract and in the Lease with each assisted Family. Maintenance and replacement (including redecoration) must be in accordance with the standard practice for the building concerned as established by the Owner.

*b. LMHA Responsibility*

LMHA will vigorously enforce the Owner's obligation to maintain contract units in accordance with its criteria for decent, safe, and sanitary housing. The Housing Authority will not make any HAP payment to the Owner for a contract unit covering any period during which the contract unit does not comply with the criteria.

If LMHA determines that a contract unit is not in accordance with its criteria for decent, safe, and sanitary housing (or other HAP contract requirement), the Housing Authority may exercise any of its remedies under the HAP contract for all or any contract units. Such remedies include termination of Housing Assistance Payments, abatement or reduction of Housing Assistance Payments, reduction of contract units, and termination of the HAP contract.

**Attachment 4**  
**LMHA FY 2018 MTW Annual Plan,**  
**Activity #48-2018: Local PBV Program**



## Activity #48-2018: Local Project-Based Voucher (PBV) Program

### A. Description

HUD awarded LMHA a \$29,575,000 Choice Neighborhoods Initiative (CNI) Implementation Grant in December 2016 for the revitalization of the Beecher Terrace public housing development and the wider Russell neighborhood. All buildings on the current Beecher Terrace site will be razed and replaced with a vibrant, sustainable mixed-income, mixed-use community.

Today's Beecher Terrace includes 758 public housing dwelling units that together contain 1,317 bedrooms. Per the Housing Authority's CNI Implementation Grant Agreement with HUD, LMHA must replace **all 1,317 bedrooms** currently on the site. LMHA has further committed to replacing **all 758 units** on the site, ensuring that the same number of households residing at Beecher today will be housed post-revitalization.

Replacement units will be affordable to low-income families for a minimum of 40 years, and all replacement housing must be available to families by the end of the CNI Implementation Grant term, which expires September 30, 2023.

The Housing Authority anticipates that all or nearly all of the 758 Beecher Terrace replacement units will be subsidized with Project-Based Voucher (PBV) assistance.

In order to deliver on this large-scale commitment within a limited time frame, and while meeting all other CNI program requirements, LMHA plans to utilize the regulatory flexibilities provided through MTW to create a Local PBV Program.

This Local PBV Program will not be limited to Beecher replacement units; however, the provision of these units will be the central goal of the Program until all 1,317 pledged bedrooms have been delivered through the creation of approximately 758 affordable dwelling units.

The Housing Authority's Local PBV Program has been designed with the following key objectives in mind:

- Supporting neighborhood revitalization, especially the transformation of the Russell neighborhood (which includes Beecher Terrace), by creating new housing choices that provide in-neighborhood relocation options for displaced LMHA residents and attract new residents to the neighborhood;
- Increasing housing choices for low-income families in high-opportunity areas;
- Providing options for low-income families to live in mixed-income and mixed-use developments; and
- Incentivizing developers to preserve or create affordable housing units that expand housing options for low-income families.

Use of the following MTW authorities will further the Housing Authority's ability to meet these key objectives:

## Proposal Selection Process

**Proposed Policy:** PBV proposals may be selected based on any one of the following three methods:

1. The results of a previous competition (no MTW authority required);
2. Issuance of a Request for Proposals, which may be limited to a specific site or sites or to geographic areas that meet certain criteria (for example, non-impacted census tracts); or
3. Selection of LMHA-owned properties without a competitive process or prior HUD approval.

**1<sup>st</sup> Applicable Regulation:** Current regulations at 24 CFR 983.51 require that proposals not be limited to a single site or impose restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites.

**Rationale for Use of MTW Authority:** LMHA and Louisville Metro Government currently maintain site control for (or may obtain site control for) several highly desirable properties that are suitable for development as Beecher Terrace replacement units. In addition, Louisville Metro Government has committed \$1 million to the acquisition of an additional parcel(s) for development as Beecher Terrace replacement housing.

The Housing Authority believes that the offer of such properties to developers at market rate, below market rate, or no cost will serve as a strong inducement to developers to apply for PBV assistance, while giving LMHA greater ability to ensure that units are developed at properties that will be highly desirable to LMHA residents, and that in some cases are located at critical locations where neighborhood revitalization efforts are being concentrated. For example, the Housing Authority has site control of a key parcel located at the epicenter of the Russell neighborhood, directly across the street from the Kentucky Center for African American Heritage and fronting the planned arts and cultural district along Muhammad Ali Boulevard. Compatible redevelopment of this parcel would have a catalytic effect, spurring additional development along the Muhammad Ali corridor.

Secondly, the CNI Program requires that replacement housing units be built either in the Russell neighborhood or in non-impacted census tracts.<sup>1</sup> LMHA seeks the authority to restrict PBV proposals to these or any other geographic criteria that affirmatively further fair housing or encourage affordable housing development in neighborhoods that are undergoing significant revitalization.

**2<sup>nd</sup> Applicable Regulation:** Current regulations at 24 CFR 983.51 require that properties owned by the Public Housing Agency must be selected through a competitive process.

**Rationale for Use of MTW Authority:** While LMHA believes that there will be a strong response from local developers interested in project-based assistance for their developments (The Housing Authority has never made PBV assistance available before, and the level of interest already expressed by developers leads us to believe that there is significant pent up demand), the provision of such a large number of Beecher Terrace replacement units by September 30, 2023 will be a challenge, and the Housing Authority has no interest in waiting to see if the private market will

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<sup>1</sup> A “non-impacted census tract” is a census tract in which the poverty rate is below 40% and the minority concentration is no more than 20% higher than that for the MSA as a whole.

fully accomplish this task. LMHA would also like to hasten the pace with which PBV units come on-line, so that families relocating from the Beecher site can move directly into permanent replacement units.

To this end LMHA has obtained site control for two turnkey four-plexes (8 units in total) in the Russell neighborhood at which it would like to project-base assistance for four units. As all Beecher replacement units will be in mixed-income developments, the other four units will also be restricted to families whose household income is below 80% of AMI, but these non-PBV units will not receive direct, ongoing subsidy.<sup>2</sup>

LMHA is also examining the feasibility of acquiring a second, 12-unit apartment complex in the Russell neighborhood, at which it would also like to project-base assistance at half of the units, while restricting the balance to families whose household income is below 80% of AMI.

LMHA will continue to pursue the acquisition of properties suitable for use or development as Beecher Terrace replacement units, and seeks authority to project-base assistance at such properties.

### **Proposal Selection Requirements**

**Proposed Policy:** Up to 100% of units within any given project may be awarded PBV assistance. However, in furtherance of the Housing Authority's commitment to the development of mixed-income housing, at its sole discretion, LMHA may limit the percentage of units that may be project-based at any given project to some amount less than 100%.

**Applicable Regulation:** 24 CFR 983.56 provides that a Public Housing Agency may not provide PBV assistance for more than 25% of units within a given project unless the units are in a building that has four or fewer dwelling units or the additional units house elderly and/or disabled families or the families residing in the additional units receive (and are required to participate in) supportive services.

**Rationale for Use of MTW Authority:** LMHA is committed to providing Beecher replacement units in mixed-income communities and in areas of opportunity, but the Housing Authority does not believe that a particular structure or project should be looked at in isolation when considering whether awarding PBV assistance will contribute to the goal of creating mixed-income communities.

For example, a local developer, who would qualify for PBV assistance under the previous competition selection method and who has expressed interest in receiving such assistance, is currently developing a 21-unit apartment building within an existing New Urbanist community that already contains more than 2,000 market-rate units. The median household income in this community is \$124,495 (more than 2.5 times the average median income for Louisville Metro). Within this context, providing PBV assistance for all 21 units within this building would increase,

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<sup>2</sup> Additional MTW flexibilities related to this project will be requested through the Housing Authority's FY 2018 MTW Annual Plan.

rather than decrease, the income mix within the community, and would provide LMHA residents with a wide variety of amenities and services, including a new elementary school, YMCA, grocery store, drugstore, restaurants, childcare facility, parks, and pools.

Likewise, on-site at Beecher Terrace, LMHA plans to project-base just under 50% of the new units (49.4%). The remaining units will be either tax-credit-only (21.6%) or market rate (29.6%). The approximate proportions are the result of a two-year, CNI-funded community planning process that involved more than 600 residents and community stakeholders and nearly 100 meetings. The ratio also meets the CNI Program requirements regarding mixed-income development.

### **Requirements for Rehabilitated and Newly Constructed Units**

**Proposed Policy:** When LMHA has received owner notice that the rehabilitated or newly constructed housing is completed, the Housing Authority will inspect the units to determine if the housing has been completed in accordance with the Agreement to Enter a HAP Contract (AHAP), including compliance with HQS standards, except that in lieu of LMHA inspection of the units, the owner may submit the Certificate of Occupancy issued by Louisville Metro Government as evidence of compliance.

**Applicable Regulation:** According to 24 CFR 983.156, upon owner notice that rehabilitated or newly constructed housing is completed, the Public Housing Agency must inspect the units to determine compliance with the AHAP, including HQS.

**Rationale for Use of MTW Authority:** Before issuing a Certificate of Occupancy, Louisville Metro Government inspects rehabilitated and newly constructed housing to ensure compliance with local codes and ordinances, which are more stringent than HQS. LMHA believes it is not a cost effective use of federal funds to duplicate these inspections. LMHA has used this MTW authority in the past at developments associated with several of its HCV Special Referral Programs.

### **HAP Contract Term**

**Proposed Policy:** The initial term of the HAP contract will not exceed 20 years or be less than one year. LMHA may agree to enter into an extension at the time of the initial HAP contract term or any time before expiration of the contract, for an additional term not to exceed 20 years, if LMHA determines an extension is appropriate to continue providing affordable housing for low-income families. LMHA may provide for multiple extensions; however, in no circumstance may such extensions exceed 20 years, cumulatively.

**Applicable Regulation:** Per 24 CFR 983.205, the initial term of the HAP contract must not exceed 15 years. Although contract extensions are permitted, in no case may the cumulative length of any extensions granted total more than 15 years.

**Rationale for Use of MTW Authority:** LMHA has committed that Beecher Terrace replacement housing will be permanent units, and in its CNI Implementation Grant application, committed to providing a 40-year affordability restriction for all replacement units. Increasing the permitted cumulative length of the HAP contract from 30 years (15 year initial contract plus 15 year extension) to 40 years (20 year initial contract plus 20 year extension) will allow us to fulfill this commitment. The policy would apply to LMHA-owned units as well.

This proposed policy is also consistent with regulatory changes to the HAP contract term described in the Federal Register notice entitled “Housing Opportunity Through Modernization Act of 2016: Implementation of Various Section 8 Provisions,” which was published in the Federal Register on January 18, 2017 (82 FR 5458) and originally scheduled to become effective on April 18, 2017. It is the Housing Authority’s understanding that this notice is currently subject to a regulatory freeze/review by Executive Order, and that its future implementation is uncertain. Should the notice provisions permitting the initial PBV HAP contract term to extend for up to 20 years and providing that any extension(s) of the PBV HAP contract may cumulatively total up to 20 years be implemented at some future date, this MTW authority will be removed from subsequent MTW Annual Plans.

### **Inspections**

**Proposed Policy:** LMHA will not inspect units at new tenant turnover. LMHA will inspect all units within a specific building concurrently once per year. Should the owner add or substitute a unit covered under the HAP contract, LMHA will inspect the new or substitute unit before providing assistance to that unit. LMHA will also conduct complaint inspections upon tenant request.

**Applicable Regulation:** The regulation at 24 CFR 983.103 requires that all units must be inspected at turnover. It also requires that at least 20% of the contract units in each building be inspected at least biennially.

**Rationale for Use of MTW Authority:** Conducting inspections concurrently at each building once per year will increase the cost effectiveness of federal expenditures by allowing LMHA to schedule inspections by geography instead of conducting inspections on an individual basis across the city whenever a unit turns over.

In any given year, one unit may turn over several times while another unit houses the same family for the entire 12 months. Under HUD’s current regulations, the unit experiencing multiple turnovers will receive multiple inspections during the year, while the unit that does not turn over will likely not be inspected at all unless captured in the random 20% sampling of units inspected biennially. It may be years between inspections for a unit occupied by a long-term tenant.

LMHA believes inspecting all units annually, but in a more geographically efficient manner, will better ensure compliance with HQS.

LMHA may still choose to rely on an alternative inspection process at mixed-finance properties in lieu of an annual inspection. However, the Housing Authority will ensure that all units are inspected at least once per year.

### **Locally-Defined Definition of Elderly**

**Proposed Policy:** For the purpose of determining the order in which families on the Housing Authority’s PBV waiting list are referred by LMHA to the owner of a project-based elderly or elderly/disabled building, an “Elderly Family” will be defined as a family whose head (including co-head), spouse, or sole member is a person who is at least 55 years of age. It may include two or more persons who are at least 55 years of age living together, or one or more persons who are at least 55 years of age living with one or more Live-In Aides.

**Applicable Regulation:** Per 24 CFR 5.403, an elderly family is defined as a family whose head (including co-head), spouse, or sole member is a person who is at least 62 years of age. It may include two or more persons who are at least 62 years of age living together, or one or more persons who are at least 62 years of age living with one or more Live-In Aides.

**Rationale for Use of MTW Authority:** For the purpose of determining eligibility for admission to designated housing developments in its Public Housing Program, LMHA has lowered the age at which a person can be considered elderly from 62 to 55. LMHA wishes to maintain consistency in this usage between the two programs. This is especially important to provide additional housing choices to public housing residents relocating from Beecher Terrace, as at the time of CNI Implementation Grant application submission, 117 Beecher households included a family member between the ages of 55 and 61.

### **Income Limits**

**Proposed Policy:** The income eligibility limit for PBV units will be increased from 50% to 80% of Area Median Income (AMI) except in the case of PBV units that are subject to a lower income restriction due to limitations imposed by other 3<sup>rd</sup>-party funding sources (for example, units that also have low-income housing tax credits or funding awarded through the National Housing Trust Fund). In the case of funding sources that impose an income cap that falls between 50% and 80% of AMI, the maximum allowable income cap will be used (For example, PBV units that also have low-income housing tax credits capped at 60% of AMI, would have an income eligibility limit of 60% of AMI).

**Applicable Regulation:** PBV units are subject to the income eligibility requirements governing the tenant-based HCV Program, which can be found at 24 CFR 982.201. Typically, admission to a PBV unit is limited to households whose income does not exceed 50% of AMI with special exceptions made only for certain households with incomes between 50% and 80% of AMI. These exceptions include, but are not limited to, families that are “continuously assisted” under the 1937 Housing Act or that meet additional eligibility criteria specified in the Public Housing Agency’s Administrative Plan.

**Rationale for Use of MTW Authority:** Today, Beecher Terrace’s 758 public housing units serve households whose income does not exceed 80% of AMI at the time of admission. Absent MTW authority, post-revitalization, the 758 planned PBV replacement units will serve households whose income does not exceed 50% of AMI.

758 units represents nearly 20% of the Housing Authority’s total public housing stock today. Absent the requested MTW flexibility, LMHA’s ability to serve families with incomes between 50% and 80% of AMI will be significantly hampered. Households in this income range will simply have fewer housing choices.

Regulation already makes provision for the admission of certain households with incomes between 50% and 80% of AMI, including in the fairly generic case that families “meet additional eligibility criteria specified in the PHA administrative plan.” LMHA is simply requesting the ability to increase the income eligibility limit to 80% of AMI without “additional eligibility criteria.”

## Income and Asset Verification

**Proposed Policy:** For PBV units that are also low-income housing tax credit (LIHTC) units, LMHA will utilize the LIHTC program's Tenant Income Certification form to verify income and assets both for determining eligibility at admission and at recertification.

**Applicable Regulation:** 24 CFR 982.201 provides that Public Housing Agencies must verify that families are income-eligible before issuing them a voucher. Regulations at 24 CFR 982.516 further require that Agencies must re-examine and verify family income at least annually thereafter; family assets must be verified at least once every three years.

**Rationale for Use of MTW Authority:** Owners of PBV units that utilize tax credits must comply with federal LIHTC regulations, which are very similar to HCV regulations. This will increase the cost effectiveness of federal expenditures by reducing LMHA staff cost incurred to verify income and assets, while still meeting the objective of the federal regulation, which is to ensure that families are income-eligible and that their Total Tenant Payment is equitable and justifiable. Residents will also benefit as they will not have to produce redundant documentation to both LMHA staff and the PBV owner. The Tenant Income Certification form requires the client's statement of income and assets, the client's signature, and the property owner's certification that they verified the data provided by the client, and is therefore reliable documentation of the client's income/asset profile.

### Notes:

- LMHA recognizes that several of the authorities requested above require modifications to the OMB-numbered HAP contract. Following activity approval, LMHA will submit a local HAP contract to HUD that reflects the approved modifications as a technical amendment to the MTW Annual Plan then in effect or in any manner that may otherwise be directed by HUD.
- LMHA already uses a number of HUD-approved MTW activities within its HCV Program. The Housing Authority plans to use the following eligibility, rent, and occupancy flexibilities in its PBV Program as well:
  - Alternate year reexaminations of elderly and disabled families (Activity #4-2007)
  - Elimination of standard earned income disregard (Activity #32-2012) and creation of new earned income disregard for elderly families (Activity #6-2008)
  - Standard medical deduction (Activity #8-2008)
  - Deduction of childcare expenses when determining Program eligibility (Activity #27-2011)
  - Annual contract rent increase limit (Activity #39-2012)
  - Financial aid disregard in calculation of Total Tenant Payment (Activity #40-2014)

### **B. Relation to Statutory Objectives**

This activity will increase high quality housing choice for low-income families by encouraging the development of affordable, mixed-income housing in areas of opportunity and in neighborhoods undergoing targeted revitalization; by allowing families with incomes between 50% and 80% of AMI to live in PBV units; and by allowing families whose head, co-head, spouse, or sole member is between the ages of 55 and 61 to have the option to live in an elderly or elderly/disabled building.

Lengthening PBV contracts to a maximum of 40 years will ensure that these housing choices remain available to families over the long-term.

The activity will increase the cost effectiveness of federal expenditures by eliminating duplicative inspections and by allowing inspectors to coordinate inspections by geography, while still ensuring that units are inspected annually. Likewise, the activity will streamline the process for income and asset verification.

**C. Anticipated Impact on the Stated Objectives**

By September 30, 2023, LMHA plans to develop 758 new PBV units, leveraging a \$29,575,000 CNI Implementation grant and more than \$200 million in additional committed funds, to create a diverse array of housing choices for low-income families. The new housing will be operated in a manner that increases the cost effectiveness of federal expenditures by reducing income/asset verification and inspection costs.

**D. Anticipated Schedule for Achieving the Stated Objectives**

Upon HUD approval of this activity, LMHA will begin soliciting PBV proposals. Concurrently, the Housing Authority will develop a local HAP contract for submission to the MTW Office within two weeks of activity approval.

LMHA anticipates it will begin selecting proposals for PBV award before the end of calendar year 2017, awarding approximately 100 – 150 PBV vouchers annually in order to fulfill its commitment to create 758 new PBV units by September 30, 2023. Once all Beecher Terrace replacement units have been provided, the Housing Authority will make a determination as to whether or not it should close the application process for its Local PBV Program.

**Timeline:**



Louisville Choice Neighborhoods Implementation Grant Replacement Housing Schedule		
TASK NAME	START DATE	COMPLETION DATE
<b>CNI IMPLEMENTATION GRANT PERIOD</b>	<b>12/12/16</b>	<b>9/30/23</b>
<b>HOUSING IMPLEMENTATION</b>		
<b>Relocation / Demolition (59 Buildings; 768 Units)</b>		
Relocation of Phase I households	5/26/17	9/30/17
Phase I Demolition (9 buildings; 121 units)	10/5/17	12/31/17
Relocation of Phase II households	4/1/18	9/30/18
Phase II Demolition (29 Buildings; 392 units)	10/1/18	3/31/19
Relocation of Phase III households	3/4/19	9/30/19
Phase III Demolition (21 buildings; 255 units)	10/1/19	5/31/20
<b>LMHA Off-Site Acquisition</b>		
<i>1506 &amp; 1508 W. Market St. (Turnkey Acquisition of Two 4-Plex Apartment Buildings)</i>		
Acquisition	8/15/17	8/15/17
Lease-Up / Stabilization	8/15/17	11/1/18
Additional Off-Site Acquisition as Opportune	7/1/18	12/31/22
<b>Off-Site Project Based Voucher Partnership (438 units)**</b>		
Release of Rolling, General RFP Open to New Construction, Rehab, & Turnkey Units (No Location Specified)	9/1/17	9/30/22
Application Review and Selection for General, Rolling RFP	11/1/17	12/31/22
Execution of Agreements & Commitment Letters for General, Rolling RFP	1/1/18	1/31/23
<i>810 Barret Ave (Vacant property jointly owned by LMHA &amp; Louisville Metro Government)</i>		
Release of Solicitation of Interest	1/15/17	3/15/17
Public Comment Period on 5 Proposals Received	4/12/17	5/12/17
Application Review & Selection	6/1/17	TBD
Execution of Agreement & Commitment Letter	TBD	TBD
Construction	TBD	TBD
Lease-up & Stabilization	TBD	TBD
<i>Iroquois Homes (Former Public Housing Site; Now Vacant Land)</i>		
Release of RFP	3/1/18	4/30/18
Application Review & Selection	5/1/18	7/31/18
Predevelopment / LIHTC Application Process (If applicable)	8/1/18	4/30/19
Construction	5/1/19	10/30/20
Lease-up Stabilization	11/1/20	6/1/21
<i>Property to Be Acquired by Louisville Metro Government Through Its "Louisville Cares" Affordable Housing Initiative (\$1 Million Leverage Commitment to CNI Grant)</i>		
Release of RFP	3/1/19	4/30/19
Application Review & Selection	5/1/19	7/31/19
Predevelopment / LIHTC Application Process (If applicable)	8/1/19	4/30/20
Construction	5/1/20	8/30/21
Lease-up & Stabilization	9/1/21	3/31/22
<i>1718 Muhammad Ali Blvd (Vacant Land; LMHA Has Purchase Agreement)</i>		
Release of RFP	3/1/19	4/30/19
Application Review & Selection	5/1/19	7/31/19
Predevelopment / LIHTC Application Process (If applicable)	8/1/19	4/30/20
Construction	5/1/20	8/30/21
Lease-up & Stabilization	9/1/21	3/31/22

TASK NAME	START DATE	COMPLETION DATE
<b>Phase I: On-Site Senior Housing (120 units, including 116 PBV)</b>		
Submission of 4% tax credit application (2017 award)	5/30/17	5/30/17
Initial Financial Closing and Construction Commencement	1/11/18	1/11/18
Housing Construction	1/12/18	6/1/19
Lease-up & Stabilization	5/1/19	10/1/19
<b>Phase II: On-Site Mixed-Income, Multifamily (100 units, including 39 PBV)</b>		
Submission of 9% tax credit application (2018 set-aside)	7/1/2017	10/6/2017
Initial Financial Closing and Construction Commencement	10/1/2018	10/1/2018
Housing Construction	11/2/2018	2/1/2020
Lease-up & Stabilization	1/1/2020	8/1/2020
<b>Phase III: On-Site, Mixed-Income, Multifamily (100 units, including 41)</b>		
Submission of 9% tax credit application (2019 set-aside)	7/1/2018	10/5/2018
Initial Financial Closing and Construction Commencement	8/1/2019	8/1/2019
Housing Construction	10/1/2019	2/27/2021
Lease-up & Stabilization	11/1/2020	6/1/2021
<b>Phase IV: On-Site, Mixed-Income, Multifamily (100 units, including 40 PBV)</b>		
Submission of 9% tax credit application (2020 set-aside)	7/1/2019	10/4/2019
Initial Financial Closing and Construction Commencement	8/1/2020	8/1/2020
Housing Construction	10/1/2020	2/27/2022
Stabilization	11/1/2021	6/1/2022
<b>Phase V: On-Site, Mixed-Income, Multifamily (200 units, including 80 PBV)</b>		
Submission of 4% tax credit application (2021 award)	12/1/2020	4/1/2021
Initial Financial Closing and Construction Commencement	7/1/2021	7/1/2021
Housing Construction	7/2/2021	12/1/2022
Lease-up & Stabilization	11/1/2022	4/1/2023

### E-I. Activity Metrics Information

LMHA will track the following HUD Standard Metrics for this activity:

<b>CE #1: Agency Cost Savings<sup>1</sup></b>				
Unit of Measurement	Baseline	Benchmark	Outcome	Benchmark Achieved?
Total cost of task in dollars (decrease).	Cost of task prior to implementation of the activity (in dollars).	Expected cost of task after implementation of the activity (in dollars).	Actual cost of task after implementation of the activity (in dollars).	Whether the outcome meets or exceeds the benchmark.
	<b>Unit Inspections</b>			
	<b>As of FY2017:</b> Total cost is \$0 (No PBV units)  <b>FY2017 average inspection cost per HCV unit:</b> \$37.03 (1.5 inspections per unit * 0.6 hrs per inspection * \$41.14 per staff hour)	\$1,234.20 using FY2017 staff cost (50 initial inspections for units where LMHA is inspector (as opposed to units where CO is used) * 0.6 hrs per inspection * \$41.14 per staff hour)	TBD	TBD

Income / Asset Verification				
	<b>As of FY2017:</b> Total cost is \$0 (No PBV units)	\$1,126.40 using FY2017 staff cost (0.4 hrs per verification * 100 verifications * \$28.16 per staff hour)	TBD	TBD
	<b>FY2017 average verification cost per HCV unit:</b> \$21.12 (0.75 hrs per verification * \$28.16 per staff hour)			
	Total Savings			
<b>As of FY 2017:</b> \$0 (No PBV units)	\$3,454.40 (FY2018 total verification & inspection cost for all PBV units - FY2017 total verification & inspection cost for 100 HCV units)	TBD	TBD	
<b>FY2017 average verification + inspection cost per HCV units:</b> \$58.15				
Cost of inspecting and verifying income/assets for PBV units annually prior to implementation	Expected cost of inspecting and verifying income/assets for PBV units during FY	Actual cost of inspecting and verifying income/assets for PBV units during FY		Explanation to be provided

Data Source(s): Emphasys; Staff logs; PHA financial records

<sup>1</sup> Although average per unit inspection and verification costs are expected to decrease over time (when comparing traditional HCV units to new PBV units), total inspection and verification costs are expected to increase over time as new PBV units are developed.

CE #2: Staff Time Savings <sup>1</sup>				
Unit of Measurement	Baseline	Benchmark	Outcome	Benchmark Achieved?
Total time to complete the task in staff hours (decrease).	Total amount of staff time dedicated to the task prior to implementation of the activity (in hours).	Expected amount of total staff time dedicated to the task after implementation of the activity (in hours).	Actual amount of total staff time dedicated to the task after implementation of the activity (in hours).	Whether the outcome meets or exceeds the benchmark.
	Unit Inspections			
	<b>As of FY2017:</b> 0 hrs (No PBV units)	30 hrs (50 initial inspections for units where LMHA is inspector (as opposed to units where CO is used) * 0.6 hrs per inspection)	TBD	TBD
	<b>FY2017 average inspection hours per HCV unit:</b> 0.9 hrs (1.5 inspections per unit * 0.6 hrs per inspection)			
	Income / Asset Verifications			
<b>As of FY2017:</b> 0 hrs (No PBV units)	40 hrs (0.4 hrs per verification * 100 verifications)	TBD	TBD	
<b>FY2017 average verification hours per HCV unit:</b> 0.75 hrs				
Total Savings				
<b>As of FY 2017:</b> 0 hrs (No PBV units)	100 hrs (FY2018 total verification & inspection hrs for all PBV units - FY2017 total verification &	TBD	TBD	
<b>FY2017 average verification + inspection</b>				

	<b>hours per HCV unit:</b> 1.7 hrs	inspection hrs for 100 HCV units)		
	Staff hours expended inspecting and verifying income/assets for PBV units annually prior to implementation	Expected staff hours expended inspecting and verifying income/assets for PBV units during FY	Actual staff hours expended inspecting and verifying income/assets for PBV units during FY	Explanation to be provided
Data Source(s): Emphasys; Staff logs; PHA financial records				

<sup>1</sup> Although average staff time spent per unit on inspections and verifications is expected to decrease over time (when comparing traditional HCV units to new PBV units), total staff time spent per unit on inspections and verifications is expected to increase over time as new PBV units are developed.

<b>CE #4: Increase in Resources Leveraged</b>				
<b>Unit of Measurement</b>	<b>Baseline</b>	<b>Benchmark</b>	<b>Outcome</b>	<b>Benchmark Achieved?</b>
Amount of funds leveraged in dollars (increase).	Amount leveraged prior to implementation of the activity (in dollars). This number may be zero.	Expected amount leveraged after implementation of the activity (in dollars).	Actual amount leveraged after implementation of the activity (in dollars).	Whether the outcome meets or exceeds the benchmark.
	<b>As of FY 2017:</b> \$0 (No PBV units)	\$19,048,700 (\$190,487 (TDC for a 2-BR walkup) * 100 units)	TBD	TBD
	Amount leveraged prior to implementation of the activity	Expected amount leveraged during FY	Actual amount leveraged during FY	Explanation to be provided
Data Source(s): CNI quarterly reports; PHA financial records				

<b>HC #1: Additional Units of Housing Made Available</b>				
<b>Unit of Measurement</b>	<b>Baseline</b>	<b>Benchmark</b>	<b>Outcome</b>	<b>Benchmark Achieved?</b>
Number (#) of new housing units made available for households (HHs) at or below 80% AMI as a result of the activity (increase). If units reach a specific type of HH, give that type in this box.	Housing units of this type prior to implementation of the activity (#). This # may be zero.	Expected housing units of this type after implementation of the activity (#).	Actual housing units of this type after implementation of the activity (#).	Whether the outcome meets or exceeds the benchmark.
	<b>As of 2017:</b> 0 (No PBV units)	100	TBD	TBD
	PBV units acquired/developed prior to implementation of the activity	Expected PBV units acquired/developed during FY	Actual PBV units acquired/developed during FY	Explanation to be provided
Data Source(s): CNI quarterly reports; Emphasys				

<b>HC #3: Decrease in Wait List Time</b>				
<b>Unit of Measurement</b>	<b>Baseline</b>	<b>Benchmark</b>	<b>Outcome</b>	<b>Benchmark Achieved?</b>
Average applicant time on wait list in months (decrease).	Average applicant time on wait list prior to implementation of the activity (in months).	Expected average applicant time on wait list after implementation of the activity (in months).	Actual average applicant time on wait list after implementation of the activity (in months).	Whether the outcome meets or exceeds the benchmark.
	<b>As of FY 2017:</b> 65 months	63 months	TBD	TBD

	Average applicant time on wait list prior to implementation of the activity.	Expected average applicant time on wait list during FY.	Actual average applicant time on wait list during FY.	Explanation to be provided
Data Source(s): Emphasys				

<b>HC #4: Displacement Prevention</b>				
<b>Unit of Measurement</b>	<b>Baseline</b>	<b>Benchmark</b>	<b>Outcome</b>	<b>Benchmark Achieved?</b>
# of HHs at or below 80% AMI that would lose assistance or need to move (decrease). If units reach a specific type of HH, give that type in this box:  Families relocating from the Beecher Terrace public housing development	HHs losing assistance/moving prior to implementation of the activity (#).	Expected HHs losing assistance/moving after implementation of the activity (#).	Actual HHs losing assistance/moving after implementation of the activity (#).	Whether the outcome meets or exceeds the benchmark.
	<b>As of FY 2017:</b> 23 HHs moved (no assistance lost) <sup>1</sup>	130 HHs moved (no assistance lost) <sup>2</sup>	TBD	TBD
	# of HHs that lost assistance/ moved prior to implementation.	Expected # of HHs that will lose assistance/move during FY.	Actual # of HHs that lost assistance/ moved during FY.	Explanation to be provided
Data Source(s): Emphasys				

<sup>1</sup> In preparation for the first phases of on-site construction at Beecher Terrace, 23 households were relocated from the site during FY2017. No household lost assistance as a result of relocation. Moreover, post-revitalization, relocated households will receive an admission preference for all on- and off-site replacement units.

<sup>2</sup> In preparation for the first phases of on-site construction at Beecher Terrace, approximately 130 households are expected to be relocated from the site during FY2018. No lease-compliant household at or below 80% of AMI will lose assistance as a result of relocation. Moreover, post-revitalization, relocated households will receive an admission preference for all on- and off-site replacement units.

<b>HC #5: Increase in Resident Mobility</b>				
<b>Unit of Measurement</b>	<b>Baseline</b>	<b>Benchmark</b>	<b>Outcome</b>	<b>Benchmark Achieved?</b>
# of HHs able to move to a better unit &/or neighborhood of opportunity as a result of the activity (increase).	HHs able to move to a better unit &/or neighborhood of opportunity prior to implementation of the activity (#). This # may be zero.	Expected HHs able to move to a better unit &/or neighborhood of opportunity after implementation of the activity (#).	Actual increase in HHs able to move to a better unit &/or neighborhood of opportunity after implementation of the activity (#).	Whether the outcome meets or exceeds the benchmark.
	<b>As of FY 2017:</b> 0 (No PBV units)	100	TBD	TBD
	# of HHs residing in a PBV unit prior to implementation of the activity	Expected # of HHs residing in a PBV unit at FYE	Actual # of HHs residing in a PBV unit at FYE	Explanation to be provided
Data Source(s): Emphasys				

### J-K. Authorizations Cited and Explanation

Attachment C, Section B.3, “Definition of Elderly Family,” which allows LMHA “to amend the definition of elderly to include families with a head of household or family member who is at least 55 years old.” This authorization waives certain provisions of Section 3(b)(3) and (G) of the 1937 Act and 24 CFR 5.403 as necessary to implement the agency’s Annual MTW Plan.

- Necessary to permit families whose head, co-head, spouse, or sole member is between the ages of 55 and 61 to reside in elderly and elderly/disabled developments.

Attachment C, Section D.1.a, which allows the Housing Authority “to determine the term and content of Housing Assistance Payment (HAP) contracts to owners during the term of the MTW demonstration.” This authorization waives certain provisions of Section 8(0)(7) of the 1937 Act and 24 CFR 982.162 as necessary to implement the agency's Annual MTW Plan;

- Required to increase cumulative term of HAP contract (initial term plus any extensions) to 40 years.

Attachment C, Section D.3.a, which authorizes the Housing Authority “to determine income qualifications for participation in the rental assistance program that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations.” This authorization waives certain provisions of Sections 16(b) and 8(o)(4) of the 1937 Act and 24 CFR 5.603, 5.609, 5.611, 5.628, and 982.201 as necessary to implement the agency's Annual MTW Plan.

- Necessary to initially determine families whose household income is between 50% and 80% of AMI eligible for PBV assistance.

Attachment C, Section D.3.b, which permits the Housing Authority to “adopt and implement any reasonable policy for verifying family income and composition and for determining resident eligibility that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations.” This authorization waives certain provisions of 24 CFR 982.516 and 982 Subpart E, as necessary to implement the agency's Annual MTW Plan.

- Needed to permit LMHA to accept the LIHTC program's Tenant Income Certification form to verify income and assets both for determining eligibility at admission and at recertification.

Attachment C, Section D.5, “Ability to Certify Housing Quality Standards,” which allows LMHA “to certify that housing assisted under MTW will meet housing quality standards established or approved by HUD.” This authorization waives certain provisions of Section 8(o)(8) of the 1937 Act and 24 CFR 982, Subpart I as necessary to implement the Agency's Annual MTW Plan.

- Necessary to permit proposed inspection schedule.

Attachment C, Section D.6.c, which allows LMHA to “adopt a local process for determining whether units meet certain eligibility requirements, including “[p]rocedures to determine whether or not units meet the Agency's requirements regarding rehabilitation and construction, including what information is required to be submitted by owners to the Agency.” This authorization waives certain provisions of Section 8(o)(13) of the 1937 Act and 24 CFR 983 Subpart D as necessary to implement the agency's Annual MTW Plan.

- Required to permit LMHA to accept the Louisville Metro Government issued Certificate of Occupancy as evidence of compliance with HQS in lieu of Housing Authority inspection of the units when determining whether the units meet the requirements for rehabilitation and construction.

Attachment C, Section D.7, “Establishment of an Agency MTW Section 8 Project-Based Program,” which permits the Housing Authority “to develop and adopt a reasonable policy and process for project-basing Section 8 tenant-based leased housing assistance.”

- Needed to allow LMHA to project-base up to 100% of units within a given development.

Attachment C, Section D.7.a, which authorizes the Housing Authority “to project-base Section 8 assistance at properties owned directly or indirectly by the Agency that are not public housing” and allows that “[p]roject-based assistance for such owned units does not need to be competitively bid.” This authorization waives certain provisions of Sections 8(o)(13)(B and D) of the 1937 Act and 24 CFR 982.1, 982.102 and 24 CFR Part 983 as necessary to implement the agency's Annual MTW Plan.

- Necessary to project-base assistance at agency-owned units without a competitive process.

Attachment C, Section D.7.b, which permits LMHA “to establish a reasonable competitive process or utilize an existing local competitive process for project-basing leased housing assistance at units that meet existing Housing Quality Standards, or any standards developed by the Agency pursuant to this MTW Agreement and approved by the Secretary, and that are owned by non-profit, or for-profit housing entities.” This authorization waives certain provisions of 24 CFR 983.51 as necessary to implement the agency's Annual MTW Plan.

- Needed to restrict PBV requests for proposals to a specific site or sites or to geographic areas that meet certain criteria (for example, non-impacted census tracts).

## **L. Information for Rent Reform**

### *1) Impact Analysis*

This activity has a single rent reform component: the use of the LIHTC Program’s Tenant Income Certification form to serve as verification of household assets and income for PBV units that are also LIHTC units.

Because the calculation used to determine Total Tenant Payment will not change, LMHA does not anticipate that this initiative will affect the amount of rent paid by any household.

At the family’s request, LMHA staff will conduct a second verification of income and assets instead of relying solely on the PBV owner provided Tenant Income Certification form. LMHA will monitor the volume of such requests and the frequency with which they result in a material change to household income or assets.

Should a significant percentage of secondary reviews conducted by LMHA result in a material change to household income or assets, the Housing Authority will evaluate whether additional training of PBV unit management staff could remedy the situation; whether LMHA staff could rely on certain information contained in the Tenant Income Certification form while conducting independent verification of other data points; or if the use of the Tenant Income Certification form should be discontinued altogether.

### *2) Hardship Case Criteria*

At the family’s request, LMHA staff will conduct a second verification of income and assets instead of relying on the PBV owner provided Tenant Income Certification form. Families will also have recourse through the Housing Authority’s informal hearing process.

### *3) Description of Annual Reevaluation of Rent Reform Activity*

This rent reform initiative will be reevaluated annually by LMHA using the benchmarks and metrics discussed above. The Housing Authority will also consider the volume of resident requests for LMHA staff to conduct secondary reviews of household income and assets, and the percentage of secondary reviews that result in a material change to household income or assets. Finally, LMHA

will take into account community input received during the MTW Annual Plan public comment period and public hearing.

4) *Transition Period*

The Tenant Income Certification form will be used for PBV units that also have low-income housing tax credits upon execution of the HAP contract.



**Attachment 5**  
**LMHA FY 2019 MTW Annual Plan,  
Activity #51-2019: Enhancements to Local  
Project-Based Voucher (PBV) Program**

### III. Proposed MTW Activities

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LMHA is proposing one new MTW activity in FY 2019:

#### **Proposed Activity 51-2019: Enhancements to Local Project-Based Voucher (PBV) Program**

##### **A. Activity Description**

This activity will build on and expand the MTW flexibilities included in LMHA's Local Project-Based Voucher Program (MTW Activity 48-2018), which was initially approved by HUD in FY 2018. The proposed enhancements described herein require additional MTW authorizations; therefore, a new MTW Activity 51-2019 is proposed.

As detailed in the FY 2018 Annual Plan, HUD awarded LMHA a \$29,575,000 Choice Neighborhoods Initiative (CNI) Implementation Grant in December 2016 for the revitalization of the Beecher Terrace public housing development and the wider Russell neighborhood. All buildings on the current Beecher Terrace site will be razed and replaced with a vibrant, sustainable mixed-income, mixed-use community. Per the CNI Implementation Grant Agreement, LMHA committed to replacing 758 units (1,317 bedrooms), ensuring that the same number of households residing at Beecher today will be housed post-revitalization. Replacement units will be affordable to low-income families for a minimum of 40 years, and all replacement housing must be available to families by the end of the CNI Implementation Grant term, which expires September 30, 2023. LMHA anticipates that all or nearly all of the 758 Beecher Terrace replacement units will be subsidized with Project-Based Voucher (PBV) assistance at on and off-site locations.

In order to deliver on this large-scale commitment within a limited timeframe, LMHA secured HUD approval for Activity 48-2018, which utilizes MTW regulatory flexibilities to create a Local PBV Program. LMHA's Local PBV Program is not limited to Beecher Terrace replacement units; however, the provision of these units will be the central objective until all 758 replacement units are completed.

##### *i. Description of Proposed Activity*

Based on its initial experiences soliciting quality owner proposals, LMHA has identified additional MTW flexibilities that will enhance the Local PBV Program, provide additional housing choices for low-income households in high opportunity areas, and incentivize developers to preserve or create affordable housing units:

1. Local PBV Program Payment Standards – Current HUD regulations at 24 CFR 983.2 and 982.503 define the parameters for establishing payment standard schedules in the PBV and tenant-based Housing Choice Voucher (HCV) programs. Under this activity, LMHA proposes to utilize MTW flexibility to establish payment standard policies that are applicable only to the Local PBV Program. LMHA will establish Local PBV payment standards that are equal to the greater of 110% of the Metropolitan Area Fair Market Rent (MAFMR) or 110% of the Small Area Fair Market Rent (SAFMR) schedules published annually by HUD. This policy is in response to local housing market conditions, and the need to attract owners of high quality housing units in high opportunity areas to the Local PBV Program. LMHA projects that this policy will expand the universe of potential Beecher Terrace replacement units; attract owners that offer new housing opportunities for low-income households in high opportunity areas; and,

attract owners that offer new mixed income housing opportunities for low-income households. Initial rent levels for a specific project will continue to require a rent reasonableness determination.

2. Local PBV Program Site-Specific Utility Allowances – Current HUD regulations at 24 CFR 983.2 require the use of a single Utility Allowance schedule for both the PBV and tenant-based HCV programs. However, HUD has waived this requirement and established alternative Utility Allowance policies for Rental Assistance Demonstration (RAD) conversion projects. Pursuant to PIH Notice 2018-11, Utility Allowances for RAD projects may be calculated on a site-specific project basis in accordance with the HUD Multifamily program requirements at Notice H 2015-04 “Methodology for Completing a Multifamily Housing Utility Analysis.” Under this MTW activity, LMHA will allow the same flexibility to owners who participate in the Local PBV program. LMHA will allow PBV owners to calculate site-specific Utility Allowances in accordance with the provisions of Notice H 2015-04 or successor notices, subject to LMHA’s review and approval prior to implementation. LMHA anticipates that the majority of Local PBV program projects will be for new construction, substantial rehab or recently constructed projects, and that these types of projects generally are built to much higher energy efficiency standards. By allowing for lower cost, site-specific Utility Allowance schedules, LMHA will increase the range of new and/or high opportunity area properties that can be subsidized under the Local PBV program and, thus, increase housing options for relocated Beecher Terrace residents and other program participants.

3. Owner Managed Site Based Waiting Lists – Section 106(a)(7) of the Housing Opportunity Through Modernization Act of 2016 (HOTMA) authorizes the use of owner-maintained, site-based waiting lists for PBV units; however, PHAs must wait for HUD to promulgate regulations prior to implementing such policies. LMHA notes that owner-maintained, site-based waiting lists are widely in use in the HUD Multifamily Program. LMHA proposes to utilize MTW authority to waive the current regulations at 24 CFR 983.251 to allow individual owners participating in the LMHA Local Project Based Voucher Program to maintain site-based waiting lists. LMHA will determine whether to allow owner-maintained, site-based waiting lists based on LMHA’s assessment of each individual owner’s management capacity. Owners will be required to adhere to fair housing, Americans with Disabilities Act and other applicable federal guidelines including, but not limited to: providing public notification of waiting list opening and closings; providing community-wide notice of housing availability; providing reasonable accommodations; and, conducting the application process in compliance with LMHA’s Language Access Plan. Subject to LMHA approval, tenant selection preferences may be adopted for individual projects in accordance with LMHA’s Administrative Plan; however, post-revitalization, relocated Beecher Terrace households will continue to receive a lifetime admission preference for all units designated as Beecher Terrace replacement units. Owners will forward applications nearing the top of the waiting list to LMHA, and LMHA will continue to maintain responsibility for eligibility determination. Upon implementation, LMHA will establish and implement a monitoring protocol to review and confirm owner compliance with fair housing, ADA and other requirements. Based upon this monitoring, LMHA will require owners to make any necessary corrective actions or may require individual owners to utilize an LMHA-managed waiting list. LMHA believes that this alternative MTW policy will expand the range and number of potential Local Project Based Voucher Program units in opportunity neighborhoods.

4. Waiver of Independent Entity Requirements for LMHA-Owned Units – Current HUD regulations at 24 CFR 983.59 require that an independent entity approved by HUD perform certain functions for PHA-owned units that are selected under the PBV program. As part of its Local PBV program, LMHA proposes to waive the independent entity requirements of 24 CFR 983, and to allow LMHA to directly perform the functions delegated to the independent entity for all LMHA-owned units including the following: review of selection process (24 CFR 983.51(e)); unit inspections, exercise of contractual remedies for violation of the HAP contract and the provision of inspection reports to the HUD Field Office (24 CFR 983.103(f)); and, determination of rent to owner, including initial rent (24 CFR 983.301(g) and 983.303(f)). Requiring approval from an independent entity increases costs and creates

potential delays in the availability of critically needed replacement housing units, while adding no measurable value to the process. Under this MTW activity, LMHA will process rent determination, inspections, contract renewal and other necessary program transactions on LMHA-owned units in accordance with the policies and procedures applicable to all other units that are part of LMHA’s Local PBV Program. In the future, LMHA will provide HUD with documentation related to LMHA-owned units upon HUD’s request. Also, LMHA’s transactions will continue to be subject to audit as part of the annual Independent Audit process.

*ii. Relationship to Statutory Objectives and Projected Impacts*

The proposed activities will increase high quality housing choices for low-income families by encouraging the development of affordable, mixed-income housing in areas of opportunity and in neighborhoods undergoing targeted revitalization and will reduce cost and achieve greater cost effectiveness. By approximately September 30, 2023, LMHA plans to develop 758 new PBV units, leveraging a \$29,575,000 CNI Implementation grant and more than \$200 million in additional committed funds, to create a diverse array of housing choices for low-income families.

*iii. Implementation Timetable*

LMHA will begin implementation of this activity immediately upon HUD approval.

**B. Activity Metrics Information**

LMHA proposes to utilize several of the same baseline and benchmark metrics as those utilized in approved MTW Activity 48-2018 for this activity. The rationale for utilizing these metrics is that both MTW Activity 48-2018 and this proposed activity directly relate to the LMHA’s Local PBV Program, and both support the same overall housing production goals and MTW statutory objectives. In addition, LMHA will utilize CE#1 and CE#2 standard metrics for tracking the impact of waiving the independent entity requirements for LMHA-owned units, and of implementing site-specific utility allowances. Proposed metrics include:

<b><i>CE #1: Agency Cost Savings</i></b>				
<b>Unit of Measurement</b>	<b>Baseline</b>	<b>Benchmark</b>	<b>Outcome</b>	<b>Benchmark Achieved?</b>
Total cost of task in dollars (decrease).	Cost of task prior to implementation of the activity (in dollars).	Expected cost of task after implementation of the activity (in dollars).	Actual cost of task after implementation of the activity (in dollars).	Whether the outcome meets or exceeds the benchmark.
	<b>Waiver of Independent Entity for LMHA Owned Units</b>			
	<b>As of FY2019:</b> Total cost is \$0 (No PBV units)*  Baseline of \$400(estimate) per PBV development for verification of site selection process. Baseline of \$48.14 per unit inspection (estimate) based on 30% increase over LMHA’s FY 2017 average inspection costs.	\$0 per Local PBV project to verify site selection.  \$37.03 per unit per Local PBV inspection as performed by LMHA.	TBD	TBD

<b>Site-Specific Utility Allowances</b>				
	<b>As of FY2019:</b> Total cost is \$0 (No PBV units)	\$206 per unit, based on an assumption of 10% savings for	TBD	TBD
	<b>FY2019 2BR utility allowance for HCV tenant-based unit:</b> \$229			
Data Source(s): Emphasys; PHA financial records				
*LMHA will identify a baseline cost and benchmark savings in the Annual Report. The baseline cost will estimate the cost associated with having an independent entity conduct the required activities for LMHA-owned units.				

<b>CE #2: Staff Time Savings</b>					
<b>Unit of Measurement</b>	<b>Baseline</b>	<b>Benchmark</b>	<b>Outcome</b>	<b>Benchmark Achieved?</b>	
Total time to complete the task in staff hours (decrease).	Total amount of staff time dedicated to the task prior to implementation of the activity (in hours).	Expected amount of total staff time dedicated to the task after implementation of the activity (in hours).	Actual amount of total staff time dedicated to the task after implementation of the activity (in hours).	Whether the outcome meets or exceeds the benchmark.	
	<b>Waiver of Independent Entity Requirements for LMHA Owned Units</b>				
	<b>As of FY2019:</b> 0 hrs (No PBV units)	0 (No staff time savings projected)	TBD	TBD	
	<b>Site-Specific Utility Allowances</b>				
<b>As of FY2019:</b> 0 hrs (No PBV units)	0 (No staff time savings projected)	TBD	TBD		
Data Source(s): Emphasys; PHA financial records					

<b>CE #4: Increase in Resources Leveraged</b>				
<b>Unit of Measurement</b>	<b>Baseline</b>	<b>Benchmark</b>	<b>Outcome</b>	<b>Benchmark Achieved?</b>
Amount of funds leveraged in dollars (increase).	Amount leveraged prior to implementation of the activity (in dollars). This number may be zero.	Expected amount leveraged after implementation of the activity (in dollars).	Actual amount leveraged after implementation of the activity (in dollars).	Whether the outcome meets or exceeds the benchmark.
	<b>As of FY 2019:</b> \$0 (No PBV units)	\$19,048,700 (\$190,487 (TDC for a 2-BR walkup) * 100 units)	TBD	TBD
Data Source(s): CNI quarterly reports; PHA financial records				

<b>HC #1: Additional Units of Housing Made Available</b>				
<b>Unit of Measurement</b>	<b>Baseline</b>	<b>Benchmark</b>	<b>Outcome</b>	<b>Benchmark Achieved?</b>
Number (#) of new housing units made available for households (HHs) at or below 80% AMI as	Housing units of this type prior to implementation of the activity (#). This # may be zero.	Expected housing units of this type after implementation of the activity (#).	Actual housing units of this type after implementation of the activity (#).	Whether the outcome meets or exceeds the benchmark.

a result of the activity (increase). If units reach a specific type of HH, give that type in this box.	<b>As of 2019:</b> 0 (No PBV units)	100	TBD	TBD
Data Source(s): CNI quarterly reports; Emphasys				

<b>HC #3: Decrease in Wait List Time</b>				
<b>Unit of Measurement</b>	<b>Baseline</b>	<b>Benchmark</b>	<b>Outcome</b>	<b>Benchmark Achieved?</b>
Average applicant time on wait list in months (decrease).	Average applicant time on wait list prior to implementation of the activity (in months).	Expected average applicant time on wait list after implementation of the activity (in months).	Actual average applicant time on wait list after implementation of the activity (in months).	Whether the outcome meets or exceeds the benchmark.
	<b>As of FY 2017:</b> 65 months	63 months	TBD	TBD
Data Source(s): Emphasys				

<b>HC #5: Increase in Resident Mobility</b>				
<b>Unit of Measurement</b>	<b>Baseline</b>	<b>Benchmark</b>	<b>Outcome</b>	<b>Benchmark Achieved?</b>
# of HHs able to move to a better unit &/or neighborhood of opportunity as a result of the activity (increase).	HHs able to move to a better unit &/or neighborhood of opportunity prior to implementation of the activity (#). This # may be zero.	Expected HHs able to move to a better unit &/or neighborhood of opportunity after implementation of the activity (#).	Actual increase in HHs able to move to a better unit &/or neighborhood of opportunity after implementation of the activity (#).	Whether the outcome meets or exceeds the benchmark.
	<b>As of FY 2019:</b> 0 (No PBV units)	100	TBD	TBD
Data Source(s): Emphasys				

### C. Cost Implications

Owner management of site-based waiting list is projected to result in a *de minimis* amount of savings, primarily the cost associated with maintaining and pulling from the waiting list. However, LMHA’s overall waiting list management and eligibility determination costs will not be impacted.

The waiver of independent entity requirements for LMHA-owned units will eliminate the costs associated with contracting with the independent entity, and allow LMHA to perform these functions using existing staff resources.

### D. Need/Justification for MTW Flexibility

1. Local PBV Program Payment Standards – MTW Agreement, Attachment C, Section D.2: “*The Agency is authorized to adopt and implement any reasonable policy to establish payment standards, rents or subsidy levels for tenant-based assistance that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations.*” The waiver of 24 CFR 983.2 and 982.517 is required to implement this flexibility.

2. Local PBV Program Site-Specific Utility Allowances – MTW Agreement, Attachment C, Section D.2: “*The Agency is authorized to adopt and implement any reasonable policy to establish payment standards, rents or subsidy levels for tenant-based assistance that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations.*” The waiver of 24 CFR 983.2 and 982.503 is required to implement this flexibility.

3. Owner Managed Site Based Waiting Lists – MTW Agreement, Attachment C, Section D.4: “*The Agency is authorized to determine waiting list procedures...that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations.*” The waiver of 24 CFR 983.251 is required to implement this flexibility.

4. Waiver of Independent Entity Requirements for LMHA-Owned Units – MTW Agreement, Attachment C: Section D.5 “*The Agency is authorized to certify that housing assisted under MTW will meet housing quality standards established or approved by HUD...This authorization waives certain provisions of Section 8(o)(8) of the 1937 Act and 24 C.F.R. 982, Subpart I as necessary to implement the Agency’s Annual MTW Plan*”; and, Section D.7: “*The Agency is authorized to project-base Section 8 assistance at properties owned directly or indirectly by the Agency that are not public housing, subject to HUD’s requirements regarding subsidy layering...This authorization waives certain provisions of Sections 8(o)(13)(B and D) of the 1937 Act and...24 CFR Part 983 as necessary to implement the Agency’s Annual MTW Plan*”. The waiver of 24 CFR 982, Subpart I, and 24 CFR 983.59, 983.51(e), 983.103(f), 983.301(g) and 983.303(f) is required to implement this flexibility.

#### **E. Rent Reform/Term Limit Information**

Not applicable. This is not a rent reform or term limit initiative.

**Attachment 6**  
**Jefferson County Income Limits**



### FY 2018 Jefferson County Income Limits

Median Family Income	FY 2018 Income Limit Category	Persons in Family							
		1	2	3	4	5	6	7	8
\$71,500	<b>30% Income Limits (\$)</b>	15,050	17,200	20,780	25,100	29,420	33,740	38,060	42,380
	<b>50% Income Limits (\$)</b>	25,050	28,600	32,200	35,750	38,650	41,500	44,350	47,200
	<b>60% Income Limits (\$)</b>	30,060	34,320	38,640	42,900	46,320	49,740	53,220	56,640
	<b>80% Income Limits (\$)</b>	40,050	45,800	51,500	57,200	61,800	66,400	70,950	75,550

**Attachment 7**  
**LMHA Local Project-Based Voucher  
Payment Standards**

2019 One (1) Bedroom			
Zip Code	110% SAFMR	110% MAFMR	PBV Rent
40023	\$693	\$757	\$757
40025	\$759	\$757	\$759
40041	\$726	\$757	\$757
40059	\$1,133	\$757	\$1,133
40118	\$781	\$757	\$781
40177	\$660	\$757	\$757
40201	\$759	\$757	\$759
40202	<b>\$671</b>	<b>\$757</b>	<b>\$757</b>
40203	<b>\$660</b>	<b>\$757</b>	<b>\$757</b>
40204	\$880	\$757	\$880
40205	\$759	\$757	\$759
40206	\$759	\$757	\$759
40207	\$891	\$757	\$891
40208	\$759	\$757	\$759
40209	\$847	\$757	\$847
40210	\$671	\$757	\$757
40211	<b>\$682</b>	<b>\$757</b>	<b>\$757</b>
40212	<b>\$748</b>	<b>\$757</b>	<b>\$757</b>
40213	\$759	\$757	\$759
40214	\$704	\$757	\$757
40215	\$715	\$757	\$757
40216	\$671	\$757	\$757
40217	\$726	\$757	\$757
40218	\$748	\$757	\$757
40219	\$671	\$757	\$757
40220	\$803	\$757	\$803
40221	\$759	\$757	\$759
40222	\$913	\$757	\$913
40223	\$924	\$757	\$924
40228	\$792	\$757	\$792
40229	\$869	\$757	\$869
40231	\$759	\$757	\$759
40232	\$759	\$757	\$759
40233	\$759	\$757	\$759
40241	\$1,045	\$757	\$1,045
40242	\$946	\$757	\$946
40243	\$1,001	\$757	\$1,001
40245	\$1,056	\$757	\$1,056
40250	\$759	\$757	\$759
40251	\$759	\$757	\$759
40252	\$759	\$757	\$759
40253	\$759	\$757	\$759
40255	\$759	\$757	\$759
40256	\$759	\$757	\$759
40257	\$759	\$757	\$759
40258	\$814	\$757	\$814
40259	\$759	\$757	\$759
40261	\$759	\$757	\$759
40268	\$759	\$757	\$759
40269	\$759	\$757	\$759
40270	\$759	\$757	\$759
40272	\$792	\$757	\$792
40280	\$935	\$757	\$935
40285	\$759	\$757	\$759
40291	\$847	\$757	\$847
40299	\$825	\$757	\$825

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2019 Two (2) Bedroom			
Zip Code	110% SAFMR	110% MAFMR	PBV Rent
40023	\$847	\$938	\$938
40025	\$935	\$938	\$938
40041	\$902	\$938	\$938
40059	\$1,408	\$938	\$1,408
40118	\$968	\$938	\$968
40177	\$814	\$938	\$938
40201	\$935	\$938	\$938
40202	\$836	\$938	\$938
40203	\$814	\$938	\$938
40204	\$1,089	\$938	\$1,089
40205	\$935	\$938	\$938
40206	\$946	\$938	\$946
40207	\$1,100	\$938	\$1,100
40208	\$946	\$938	\$946
40209	\$1,056	\$938	\$1,056
40210	\$836	\$938	\$938
40211	\$847	\$938	\$938
40212	\$924	\$938	\$938
40213	\$935	\$938	\$938
40214	\$869	\$938	\$938
40215	\$891	\$938	\$938
40216	\$836	\$938	\$938
40217	\$902	\$938	\$938
40218	\$924	\$938	\$938
40219	\$825	\$938	\$938
40220	\$1,001	\$938	\$1,001
40221	\$935	\$938	\$938
40222	\$1,133	\$938	\$1,133
40223	\$1,144	\$938	\$1,144
40228	\$979	\$938	\$979
40229	\$1,078	\$938	\$1,078
40231	\$935	\$938	\$938
40232	\$935	\$938	\$938
40233	\$935	\$938	\$938
40241	\$1,298	\$938	\$1,298
40242	\$1,166	\$938	\$1,166
40243	\$1,243	\$938	\$1,243
40245	\$1,309	\$938	\$1,309
40250	\$935	\$938	\$938
40251	\$935	\$938	\$938
40252	\$935	\$938	\$938
40253	\$935	\$938	\$938
40255	\$935	\$938	\$938
40256	\$935	\$938	\$938
40257	\$935	\$938	\$938
40258	\$1,012	\$938	\$1,012
40259	\$935	\$938	\$938
40261	\$935	\$938	\$938
40268	\$935	\$938	\$938
40269	\$935	\$938	\$938
40270	\$935	\$938	\$938
40272	\$979	\$938	\$979
40280	\$1,155	\$938	\$1,155
40285	\$935	\$938	\$938
40291	\$1,045	\$938	\$1,045
40299	\$1,023	\$938	\$1,023

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2019 Three (3) Bedroom			
Zip Code	110% SAFMR	110% MAFMR	PBV Rent
40023	\$1,155	\$1,274	\$1,274
40025	\$1,265	\$1,274	\$1,274
40041	\$1,221	\$1,274	\$1,274
40059	\$1,914	\$1,274	\$1,914
40118	\$1,309	\$1,274	\$1,309
40177	\$1,111	\$1,274	\$1,274
40201	\$1,265	\$1,274	\$1,274
40202	<b>\$1,133</b>	<b>\$1,274</b>	<b>\$1,274</b>
40203	<b>\$1,111</b>	<b>\$1,274</b>	<b>\$1,274</b>
40204	\$1,474	\$1,274	\$1,474
40205	\$1,265	\$1,274	\$1,274
40206	\$1,287	\$1,274	\$1,287
40207	\$1,496	\$1,274	\$1,496
40208	\$1,287	\$1,274	\$1,287
40209	\$1,430	\$1,274	\$1,430
40210	\$1,133	\$1,274	\$1,274
40211	<b>\$1,155</b>	<b>\$1,274</b>	<b>\$1,274</b>
40212	<b>\$1,254</b>	<b>\$1,274</b>	<b>\$1,274</b>
40213	\$1,265	\$1,274	\$1,274
40214	\$1,177	\$1,274	\$1,274
40215	\$1,210	\$1,274	\$1,274
40216	\$1,133	\$1,274	\$1,274
40217	\$1,221	\$1,274	\$1,274
40218	\$1,254	\$1,274	\$1,274
40219	\$1,122	\$1,274	\$1,274
40220	\$1,364	\$1,274	\$1,364
40221	\$1,265	\$1,274	\$1,274
40222	\$1,540	\$1,274	\$1,540
40223	\$1,551	\$1,274	\$1,551
40228	\$1,331	\$1,274	\$1,331
40229	\$1,463	\$1,274	\$1,463
40231	\$1,265	\$1,274	\$1,274
40232	\$1,265	\$1,274	\$1,274
40233	\$1,265	\$1,274	\$1,274
40241	\$1,760	\$1,274	\$1,760
40242	\$1,584	\$1,274	\$1,584
40243	\$1,683	\$1,274	\$1,683
40245	\$1,782	\$1,274	\$1,782
40250	\$1,265	\$1,274	\$1,274
40251	\$1,265	\$1,274	\$1,274
40252	\$1,265	\$1,274	\$1,274
40253	\$1,265	\$1,274	\$1,274
40255	\$1,265	\$1,274	\$1,274
40256	\$1,265	\$1,274	\$1,274
40257	\$1,265	\$1,274	\$1,274
40258	\$1,375	\$1,274	\$1,375
40259	\$1,265	\$1,274	\$1,274
40261	\$1,265	\$1,274	\$1,274
40268	\$1,265	\$1,274	\$1,274
40269	\$1,265	\$1,274	\$1,274
40270	\$1,265	\$1,274	\$1,274
40272	\$1,331	\$1,274	\$1,331
40280	\$1,573	\$1,274	\$1,573
40285	\$1,265	\$1,274	\$1,274
40291	\$1,419	\$1,274	\$1,419
40299	\$1,386	\$1,274	\$1,386

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**Attachment 8**  
**Utility Allowance Charts**

# Allowances for Tenant-Furnished Utilities and Other Services

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

LOCALITY		Unit Type				Effective Date	
Louisville Metro Housing Authority		Apartment				01/01/19	
Utility or Service	Monthly Dollar Allowances						
	0 BR	1 BR	2 BR	3 BR	4 BR	5BR	
Heating	a. Natural Gas	35	42	49	56	67	74
	b. Bottle Gas	45	64	82	100	127	145
	c. Electric	30	41	53	65	83	95
	d. Oil/Other	35	49	63	78	99	113
Cooking	a. Natural Gas	3	4	6	7	9	10
	b. Bottle Gas	9	13	17	20	26	30
	c. Electric	5	7	9	11	14	16
	d. Oil/Other	N/A	N/A	N/A	N/A	N/A	N/A
Other Electric	38	44	50	56	65	71	
Air Conditioning	4	5	6	7	8	9	
Water Heating	a. Natural Gas	7	10	13	15	20	22
	b. Bottle Gas	20	28	36	45	57	65
	c. Electric	14	19	25	31	39	45
	d. Oil/Other	15	21	28	34	43	49
Water	15	18	28	37	47	58	
Sewer	33	39	48	60	72	84	
Range/Microwave	5	5	5	5	5	5	
Refrigerator	5	5	5	5	5	5	
Other-Specify							
<b>Actual Family Allowances</b> To be used by the family to compute allowance						Utility or Service	Per Month Cost
Complete below for the actual unit rented.						Heating	\$
Name of Family						Cooking	
						Other Electric	
Address of Unit						A/C	
						Water Heating	
						Water	
						Sewer	
						Range/Microwave	
Number of Bedrooms	Contract Rent	\$ _____				Refrigerator	
	Utility Allowance	\$ _____				Other	
	Gross Rent	\$ _____					
						<b>Total</b>	\$

# Allowances for Tenant-Furnished Utilities and Other Services

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

LOCALITY		Unit Type				Effective Date	
Louisville Metro Housing Authority		Duplex/Townhouse/Row				01/01/2019	
Utility or Service	Monthly Dollar Allowances						
	0 BR	1 BR	2 BR	3 BR	4 BR	5BR	
Heating	a. Natural Gas	35	43	51	58	69	77
	b. Bottle Gas	48	67	86	105	133	152
	c. Electric	31	43	56	68	87	99
	d. Oil/Other	37	52	67	81	104	118
Cooking	a. Natural Gas	3	5	6	7	9	11
	b. Bottle Gas	9	13	17	20	26	30
	c. Electric	5	7	9	11	14	16
	d. Oil/Other	N/A	N/A	N/A	N/A	N/A	N/A
Other Electric		38	44	50	56	65	71
Air Conditioning		4	5	6	7	8	9
Water Heating	a. Natural Gas	7	10	13	15	20	22
	b. Bottle Gas	20	28	36	45	57	65
	c. Electric	14	19	25	31	39	45
	d. Oil/Other	15	21	28	34	43	49
Water		15	18	27	37	47	58
Sewer		33	39	48	60	72	84
Range/Microwave		5	5	5	5	5	5
Refrigerator		5	5	5	5	5	5
Other-Specify							
<b>Actual Family Allowances</b> To be used by the family to compute allowance Complete below for the actual unit rented.						Utility or Service	Per Month Cost
Name of Family						Heating	\$
						Cooking	
Address of Unit						Other Electric	
						A/C	
						Water Heating	
						Water	
						Sewer	
Number of Bedrooms						Range/Microwave	
						Refrigerator	
						Other	
Contract Rent						\$	_____
Utility Allowance						\$	_____
Gross Rent						\$	_____
<b>Total</b>						<b>\$</b>	



**Attachment 9**  
**Notice H 2015-04:**  
**Methodology for Completing a**  
**Multifamily Housing Utility Analysis**



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-8000

OFFICE OF HOUSING

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Special Attention of:	Notice:	H-2015-04
Multifamily Regional Center/Hub Directors	Issued:	June 22, 2015
Multifamily Satellite/Program Center Directors	Revised:	September 9, 2015
Rural Services (RHS) Directors	Expires:	This notice remains in effect until amended, revoked, or superseded
Supervisory Housing Project Managers		
Housing Project Managers		
Contract Administrators		
Multifamily Owners and Management Agents		

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Subject: Methodology for Completing a Multifamily Housing Utility Analysis

I. PURPOSE

This notice provides instruction to owners and management agents (O/As) for completing the utility analysis required at the time of the annual or special adjustment of contract rents and when a utility rate change results in a cumulative increase of 10 percent or more from the most recently approved utility allowance. As discussed below in Part III, the notice builds upon the June 2011 memorandum titled *Clarification Utility Allowance Regulations* issued by former Deputy Assistant Secretary for Multifamily Housing Programs, Carol J. Galante. Sections IV. A. 1. b) and IX. C. have been revised for clarity.

II. APPLICABILITY

This notice is applicable for the following programs:

- A. Project-based Section 8
  1. New Construction
  2. State Agency Financed
  3. Substantial Rehabilitation
  4. Section 202/8
  5. Rural Housing Services (RHS) Section 515/8
  6. Loan Management Set-Aside (LMSA)
  7. Property Disposition Set-Aside (PDSA)
- B. Section 101 Rent Supplement
- C. Section 202/162 Project Assistance Contract (PAC)
- D. Section 202 Project Rental Assistance Contract (PRAC)
- E. Section 202 Senior Preservation Rental Assistance Contracts (SPRAC)

- F. Section 811 PRAC; Project Rental Assistance (PRA)<sup>1</sup>
- G. Section 236
- H. Section 236 Rental Assistance Payments (RAP)
- I. Section 221(d)(3) Below Market Interest Rate (BMIR)

### III. BACKGROUND

The Department of Housing and Urban Development's (HUD) Office of Multifamily Housing has been working towards streamlining the methodology for utility analyses as part of a larger effort to make energy and water conservation a priority at all HUD Multifamily properties. Currently, HUD's annual outlay for utilities is more than six billion dollars a year. HUD is exploring how to make the Multifamily portfolio more energy and water efficient, to reduce O/As' operating costs and reduce HUD outlays for utilities.

The Department is a partner in the President's Better Buildings Challenge (BBC), a voluntary leadership initiative that asks building owners, developers, and managers to make a public commitment to energy efficiency. Many BBC Multifamily partners own HUD-affiliated properties and Multifamily Housing is providing incentives to help O/As meet the BBC goal to reduce energy consumption by 20 percent over ten years across their entire portfolio. Accurate utility data collection and analysis are integral to success in the reduction of energy and water consumption. This notice is a key step in streamlining the methodology for determining utility allowances. Additionally, it is expected that the data-centered approach will offer an opportunity for O/As to reevaluate property energy usage and make efforts to conserve where feasible.

In June 2011, then Deputy Assistant Secretary for Multifamily Housing Programs, Carol J. Galante issued a memorandum to Multifamily Hub and Program Center Directors and Contract Administrators providing clarifications to existing statutes, regulations, and policies regarding utility allowances in Multifamily Housing properties, but did not identify a methodology to be used to complete a utility analysis and determine utility allowances. The memorandum clarified the following:

- Owners of multifamily housing properties that receive subsidy assistance, and for which HUD provides a utility allowance, are required to adjust their properties' utility allowances every year at the time of the annual and special adjustments of contract rents.
- Utility adjustments must be supported by a utility analysis.

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<sup>1</sup> A Project Rental Assistance (PRA) property with a Rental Assistance Contract (RAC) that specifies use of the HUD Multifamily Housing policy for developing utility allowances will use the methodology outlined in this notice to develop utility allowances for that property.

- Adjustments to the utility allowance must be made regardless of whether the utility analysis shows an increase or a decrease.
- Rent adjustments must be held until the owner submits the utility analysis and all other required submissions. Once submitted, the rent adjustment will be retroactively implemented.
- Owner certifications in lieu of a utility analysis are not permitted.
- As required by 24 CFR 245.405(a) and 245.410, a minimum of 30-days notice must be provided to tenants for any utility allowance decrease.
- Tenants have the right to participate in and comment on a proposed decrease in the utility allowance.
- A decrease in a tenant's utility allowance does not constitute a change in total tenant payment.
- Multiple utility allowance adjustments are permitted throughout the contract year.
- A utility allowance must be increased mid-year when changes in utility rates result in an increase of 10 percent or more to the utility allowance from the most recently approved utility allowance.

Since the June 2011 memorandum was issued, industry partners have requested that Multifamily Housing leadership provide a national standard for an acceptable analysis, which will also provide an appropriate utility allowance to their tenants. To accomplish these goals, industry leaders asked Multifamily Housing to provide helpful tools to assist them in conducting a reliable analysis. These tools, which have been included in this notice or as an attachment to this notice, include a sample tenant consent form, a directive requiring tenants to provide utility data upon request, and an Excel spreadsheet to aid in the allowance calculation.

The regulation at 24 CFR Part 5.603 defines Utility Allowance as the estimate of the “monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances.” The utility analysis methodology described below is premised on calculating average utility consumption based on actual tenant consumption by unit size, which Multifamily Housing in consultation with HUD’s Office of Policy Development and Research proposes as an estimate of reasonable consumption by an energy-conservative household of modest circumstances. This has been and continues to be the basis for utility analyses in the programs covered by this notice.

#### IV. UTILITY ANALYSIS METHODOLOGY

Multifamily property owners must establish baseline utility allowances for each of their bedroom sizes once every third year, which are determined by using the baseline utility analysis outlined in Section A below. For the two years after the baseline is established, O/As have the option to perform a factor-based utility analysis, as described in Section B below.

## A. Baseline Utility Analysis

A baseline utility analysis makes use of the sample size methodology detailed in Part VI below. To perform a baseline analysis, the O/A must perform the following steps:

1. Request utility data from either the utility company or the tenant household for at least the number of units determined by the sample size methodology detailed below. This must be done for each bedroom size at the property. If the property consists of multiple identical buildings (or buildings that are substantially similar), then the sampling may be performed at the property level (encompassing all buildings on a site) for each bedroom size. If the buildings are not identical, the sampling must be done for each bedroom size for each building.

A unit should be excluded from the sample if it:

- a) Is receiving an increased utility allowance as a reasonable accommodation;
- b) Has been vacant for more than 2 months. Units included in the sample should have at least 10 months of occupancy; or
- c) Is receiving a flat utility rate as part of a low-income rate assistance utility program.

Note: A baseline utility analysis can use a sampling greater than the HUD approved sample size.

2. Determine the average utility cost for each bedroom size without removing any units from the analysis beyond those excluded from the sample size as indicated in (1) above.

Do not remove the highest or lowest utility cost household when determining the average.

3. Recommend this amount to the contract administrator (CA) for approval.

A sample format for utility allowance submissions, which includes built-in formulas to average utility costs for each unit size, can be found as Attachment A to this notice.

Multifamily Housing recognizes the difficulties associated with obtaining utility data from utility companies and tenant households. To assist in obtaining the

required sample size, a sample tenant release form is attached to the notice (Attachment B). Designating a workstation in the management office for tenants to access their utility accounts and print utility information has proven to be an effective way to obtain data.

1. Implementation - Properties with Contract Anniversary Dates Within 180 Days of Publication of this Notice

Properties that fall into this category can choose to perform their upcoming annual utility analysis using either the existing methodology or the methodology outlined in this notice. If the existing methodology is used, a baseline analysis as described above must be used at the next contract anniversary date to establish baseline utility allowances.

2. Properties with Contract Anniversary Dates 180 Days after Publication of this Notice

Properties that fall into this category must perform their upcoming utility analysis using the methodology outlined in this notice.

B. Factor-Based Utility Analysis

For the two years after a baseline utility analysis is completed, the utility allowance amounts for each bedroom size and each utility at the property can be adjusted by a state-specific increase factor, the Utility Allowance Factor (UAF), provided by HUD, in lieu of a baseline utility analysis. The UAF, which can be found on the HUDUser website, is determined by considering the state-specific average retail price of electricity, natural gas, water, and oil/propane for residential customers that is published by the U.S. Energy Information Administration.

After completing the property's utility analysis under the factor-based utility analysis method, O/As should compare the adjusted utility analysis to their paid utilities over the previous twelve months. If, in the O/A's determination, the results indicate a significant disparity between the two, the O/A should complete a baseline analysis to help ensure the allowance(s) provided are accurate.

C. Utility Allowance Changes Outside of the Contract Rent Adjustment Schedule

Owners are required to submit documentation and a request for an increase in utility allowances when changes in utility rates result in a cumulative increase in utility allowances of 10 percent or more from the most recently approved utility allowance. When the owner requests an increase in utility allowances, the owner must submit either of the following as evidence of the rate change:

1. Utility bills from the month prior to the utility rate change and the first month after the utility rate change; or
2. Verification of the increase from the utility provider.

Note that a 10 percent or greater increase in any one utility component may not necessarily result in a corresponding 10 percent or greater increase in the utility allowance. Only when a utility rate change results in a cumulative utility allowance increase of 10 percent or more must the owner request the increase.

If required under the triennial cycle, the owner must still complete a baseline utility analysis at the next contract rent adjustment. If the owner performed a baseline utility analysis in the previous year and can use a factor-based utility analysis at the time of contract rent adjustment, the utility for which the rate was raised will not be adjusted by the UAF for that utility; however, all other utilities will be adjusted by the UAF.

## V. UTILITY ALLOWANCE DECREASES

### A. Notice to tenants

Whenever an adjustment to the utility allowance results in a decrease, an owner must follow the requirements of 24 CFR Part 245.405(a) and 245.410 regarding notice to tenants.

### B. Phase-in of certain decreases

If the utility allowance decrease that results from the initial application of this methodology would exceed 15 percent of the most recent utility allowance and that decrease is equal to or greater than \$10, the decrease must be phased-in. This means the O/A will implement a 15 percent decrease from the most recent utility allowance for that year, and then implement the remainder of the calculated decrease the following year, so that no decrease in any one year is greater than 15 percent.

For example, if a tenant's previous utility allowance was \$120 and the analysis indicates a total adjustment that decreases it to \$96 (a 20 percent decrease), the utility allowance has exceeded the 15 percent decrease (and the decrease is at least \$10); the O/A will submit an adjustment to \$102 (a 15 percent decrease from \$120) in the first year and then a further adjustment the following year to \$96 (multiplied by the applicable UAF), such that the full adjustment is phased-in over two years. The UAF will be applied in the second and third years of the triennial cycle after subtracting out any phased reduction. To continue with the example above, \$96 would be multiplied by the UAF to establish the second-year utility allowance. (If the decrease is less than \$10, the owner will implement the full decrease without any phase-in.)

## VI. UTILITY ANALYSIS SAMPLE SIZE

The O/A must use an appropriate sample size to perform a statistically accurate utility analysis. Multifamily Housing requested assistance from HUD's Office of Policy Development and Research (PD&R) to determine the appropriate sample size. To support this study, utility analyses were obtained from properties in California, Florida, Indiana, Massachusetts, New York, North Carolina, Ohio, and Washington, DC. PD&R's research, which used a 12 percent margin of error and a 95 percent confidence interval, resulted in the sample size rule and formula below.

This formula has been built into the utility allowance submission template mentioned earlier and Figure 1 below shows how it translates based on the number of units per bedroom size.

<b>Figure 1</b>	
<b>Number of Units *</b>	<b>Minimum Sample</b>
1-20	All
21-61	20
62-71	21
72-83	22
84-99	23
100-120	24
121-149	25
150-191	26
192-259	27
260-388	28
389 and above	29

\*Per bedroom size. If the property consists of multiple non-identical buildings (the buildings are not substantially similar), then the sampling must be performed for each bedroom size for each building on the site.



Figure 2 below illustrates how many units would be sampled using a random representation of contract units of multiple bedroom sizes within a property.

<b>Figure 2</b>		
<b>Bedroom Size</b>	<b>Number of Contract Units</b>	<b>Sampling for Utility analysis</b>
0 Bedroom	15	15
1 Bedroom	113	24
2 Bedroom	74	22
3 Bedroom	50	20
4 Bedroom	7	7
Total Units	259	88

Rule:

- If  $N < 20$ , sample all units
- If  $21 \leq N \leq 61$ , sample 20 units
- If  $N > 61$ , sample  $n_0$  using the formula below.

Formula:

$$n_0 = (z^2) * (CV^2) / (e^2 + (z^2) * (CV^2)/N)$$

$N$  is the number of Section 8 units of a particular bedroom size  
 $z$  is the value corresponding to a 95% confidence interval = 1.96  
 $CV$  is the coefficient of variation of utilities, which is set at 0.34  
 $e$  is the acceptable percent margin of error, which is set at 0.1

## VII. ALLOWANCES FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION

Properties undergoing new construction or substantial rehabilitation may establish initial utility allowances for new or rehabilitated units based on analysis completed at underwriting through an energy consumption model, including an HFA-approved utility allowance calculator. This option is based on guidance established by the Internal Revenue Service under Section 42 Utility Allowance Regulations Update. The energy consumption model must, at a minimum, take into account specific factors including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of the building location. Second, the utility estimates must be calculated by either (1) a properly licensed engineer or (2) a qualified professional approved by HUD. Third, the owner must furnish a copy of the estimates derived from the energy consumption model to HUD or the CA and make copies of the estimates available to all tenants in the building. Finally, the building owner must pay for all costs incurred in obtaining the utility estimates from the qualified professional and providing

the estimates to HUD and tenants. The O/A may use the utility allowance model instead of the methodology outlined in this notice to establish utility allowances only in the first year of occupancy post-construction.

For example, a property newly constructed or rehabilitated under the Rental Assistance Demonstration (RAD) program and converting to project-based rental assistance may establish initial utility allowances using such a calculator. However, when the property is occupied and the owner can obtain 12 months of consumption data, the owner must then follow the methodology in this notice and establish a baseline analysis. A newly constructed or rehabilitated property with a Section 8 HAP contract added to it through an 8 (bb) transfer of budget authority, or an existing Section 8 property undergoing rehabilitation in conjunction with a contract renewal under Chapter 15 of the Section 8 Renewal Guide would also be examples of properties that may *initially* utilize an energy consumption model calculator to estimate utility allowances, but thereafter follow the methodology in this notice.

## VIII. ADMINISTRATIVE PROCEDURES

Upon completion of the utility analysis, the O/A must submit the analysis to the CA for review and approval. Calculations may be made using a software tool of the owner's choice (e.g. they may use the Excel spreadsheet offered by HUD or other tabulation software) as long as the inputs reflect the methodology detailed in this Notice. HUD will serve as a resource to O/As by providing training and technical assistance where possible.

## IX. REQUIREMENTS FOR TENANT HOUSEHOLDS

### A. Tenant Utility Release Form

An Owner may require a tenant to sign a release for utility data in certain circumstances. For example, a utility company may require a tenant release as a condition of providing utility data. If a tenant release is necessary, the O/A will request and the tenant household is required to sign a release under 24 CFR 5.659 and the *HUD Model Lease for Subsidized Projects*. For HUD programs, the release remains applicable for the household's term of tenancy; however, there may be utility providers that require a tenant's signed release form more frequently. A sample tenant utility release form is included here as Attachment B.

### B. Households are required to provide utility data and documentation if requested.

In accordance with the regulation at 24 CFR 5.659 and the *HUD Model Lease for Subsidized Projects*, households must provide utility documentation as requested by the O/A and the request does not have to correspond with a household's recertification. Tenants must also disclose if they are paying a flat rate as part of a

low-income rate assistance program.

### C. Disclosure of Utility Assistance

Households are required to disclose whether they are receiving utility assistance from sources other than HUD. O/As must ask this question at a tenant's annual recertification of income and family composition, because these assistance payments are a source of income and are included in the determination of annual income and the calculation of total tenant payment. See 24 CFR 5.609(a) and HUD Handbook 4350.3 paragraph 5-6.G.1. Households receiving utility assistance from sources other than HUD continue to receive the baseline HUD utility allowance as determined by the most recent utility analysis. Assistance that must be reported includes cash or other assistance from utility providers or other entities, **except when specifically excluded from income by other federal guidance**<sup>2</sup> Failure to disclose this income will be considered a lease violation in accordance with annual recertification requirements.

### X. PENALTIES FOR TENANT NONCOMPLIANCE WITH PART IX

Failure to comply with the requirements in Part IX above is a lease violation and may result in termination of tenancy. If an owner pursues termination of tenancy, the termination must be carried out in accordance with Chapter 8 of HUD Handbook 4350.3, REV-1.

### XI. VOLUNTARY USE OF EPA'S ENERGY STAR PORTFOLIO MANAGER

O/As of Multifamily Housing properties that both receive project-based rental assistance, and for which HUD provides a utility allowance, are encouraged to use ENERGY STAR Portfolio Manager, or an equivalent online tool, to track whole-building utility data (cost and consumption). If O/As cannot achieve whole-building data, they can utilize Portfolio Manager and follow the sampling protocol identified in this notice. ENERGY STAR Portfolio Manager is a no-cost, secure online resource that enables O/As to benchmark, track, and manage energy and water consumption at the property and portfolio level. O/As can use EPA's ENERGY STAR Portfolio Manager to identify under-performing buildings, set investment priorities, monitor and verify efficiency improvements, receive EPA recognition for superior energy performance, and report out on building and portfolio performance.

For more information on the use of the EPA Portfolio Manager, please contact Michael Zatz at [zatz.michael@epa.gov](mailto:zatz.michael@epa.gov) or go to <http://www.energystar.gov/buildings/facility->

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<sup>2</sup> Assistance under the Department of Health and Human Services Low-Income Home Energy Assistance Program (LIHEAP) should not be reported as income. Please see the May 20, 2014 Federal Register for the current list of federally mandated exclusions from income, here: <http://www.gpo.gov/fdsys/pkg/FR-2014-05-20/pdf/2014-11688.pdf>.

[owners-and-managers/existing-buildings/use-portfolio-manager.](#)

## XII. INFORMATION COLLECTION

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control numbers 2502-0352. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

## XIII. CONTACT

For more information on the utility analysis methodology outlined in this notice, please contact Kate Brennan in the Office of Asset Management and Portfolio Oversight at [Catherine.M.Brennan@hud.gov](mailto:Catherine.M.Brennan@hud.gov).

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Edward L. Golding  
Principal Deputy Assistant Secretary for Housing

Property Name: \_\_\_\_\_

Date \_\_\_\_\_

Contract Number: \_\_\_\_\_

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

	<b>Contract Units</b>	<b>Units to be Sampled</b>
<b>0 Bedroom Units</b>		0
<b>1 Bedroom Units</b>		0
<b>2 Bedroom Units</b>		0
<b>3 Bedroom Units</b>		0
<b>4 Bedroom Units</b>		0
<b>5 Bedroom Units</b>		0

	<b>Average as Calculated from Analysis</b>
<b>0 Bedroom Units</b>	N/A
<b>1 Bedroom Units</b>	N/A
<b>2 Bedroom Units</b>	N/A
<b>3 Bedroom Units</b>	N/A
<b>4 Bedroom Units</b>	N/A
<b>5 Bedroom Units</b>	N/A

	<b>Current Utility Allowance</b>	<b>Proposed Utility Allowance</b>
<b>0 Bedroom Units</b>		
<b>1 Bedroom Units</b>		
<b>2 Bedroom Units</b>		
<b>3 Bedroom Units</b>		
<b>4 Bedroom Units</b>		
<b>5 Bedroom Units</b>		















SAMPLE RELEASE OF TENANT UTILITY INFORMATION

DATE:

TO: (Name of Utility Provider Address)

FROM: (Name Owner/Agent Address)

SUBJECT: Request for Utility Information

Dear Sir/Madam:

The person named below receives housing assistance under a program of the U.S. Department of Housing and Urban Development (HUD). The Department provides utility allowances to properties receiving subsidy assistance where all or some utilities are paid directly by the tenants. These utility allowances are adjusted each year and supported by an owner's analysis of the property's utility costs and consumption data.

In order to perform this utility analysis and better estimate the allowance provided to our tenants, your cooperation is requested in providing cost and/or consumption data for the below individual for the previous 12 months. Below you will find the tenant's consent to release this information.

Thank you for your help with HUD's goal of ensuring the right benefits go to the right individuals.

Request for Utility Information for: NAME: \_\_\_\_\_

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

PLEASE RETURN THIS UTILITY INFORMATION TO THE PERSON LISTED ABOVE

CONSENT TO THE RELEASE OF UTILITY INFORMATION: I hereby authorize the release of the requested utility information to the building owner and to HUD for the term of my tenancy at the above address. Information obtained under this consent is limited to utility cost and consumption for the address provided above. I understand that my utility information will be used to adjust utility allowances and to enable HUD to better conserve energy and better manage its expenditures on utilities.

\_\_\_\_\_  
Signature of Tenant

\_\_\_\_\_  
Date

Note to Applicant/Tenant: You do not have to sign this form if either the requesting organization or the organization supplying the information is left blank.

\_\_\_\_\_  
Name of Property Owner or Agent

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature of Property Owner or Agent

\_\_\_\_\_  
Date

PENALTIES FOR MISUSING THIS CONSENT:

Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government. HUD and any owner (or any employee of HUD or the owner) may be subject to penalties for unauthorized disclosures or improper uses of information collected based on the consent form. Use of the information collected based on this verification form is restricted to the purposes cited above. Any person who knowingly or willingly requests, obtains, or discloses any information under false pretenses concerning an applicant or participant may be subject to a misdemeanor and fined not more than \$5,000. Any applicant or participant affected by negligent disclosure of information may bring civil action for damages and seek other relief, as may be appropriate, against the officer or employee of HUD or the owner responsible for the unauthorized disclosure or improper use. Penalty provisions for misusing the social security numbers are contained in the Social Security Act at 208 (a) (6), (7) and (8). Violations of these provisions are cited as violations of 42 USC 408 (a) (6), (7) and (8).