

# **Salary Comparability Study**

## **Request for Proposals (RFP)**

Issue Date: **July 2<sup>nd</sup>, 2025**

Deadline For Questions: **July 16<sup>th</sup>, 2025**

Submission Deadline: **August 1<sup>st</sup>, 2025 @ 3:00 p.m.**



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[www.ckha.com](http://www.ckha.com)



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## **I. INTRODUCTION**

Charleston-Kanawha Housing Authority (CKHA) is a public housing authority (PHA) established in 1939 to provide federally subsidized housing and housing assistance to low-income families in Kanawha, Putnam, and Clay counties. The administrative office is located at 1525 Washington Street West, Charleston, WV 25387.

CKHA is led by a Chief Executive Officer (CEO) and governed by a five-person Board of Commissioners (BOC). It operates in accordance with Title 24 of the Code of Federal Regulations, state laws, and established programs and administrative policies. The organization employs approximately 70 staff members who oversee property management, resident service coordination, administrative and financial operations, maintenance and modernization services, and rental assistance program administration.

CKHA owns and operates 1,139 public housing units across 12 sites, assists over 3,000 families through the Housing Choice Voucher (HCV) program, and receives approximately \$3.5 million annually in HUD Public Housing Modernization/Capital Fund Program grants and other funding sources. CKHA's mission is to provide every low, very low, and extremely low-income family with a decent, safe, affordable place to live while linking or providing programs that will assist them on their journey to self-sufficiency.

CKHA operates a non-profit instrumentality, Housing Innovations Corporation (HIC), a 501(c)(3) entity, established in 2005 to serve as CKHA's development and management arm. In 2007, CKHA began redeveloping its severely distressed public housing sites through the Low-Income Housing Tax Credit (LIHTC) program. To date, ten development phases have been completed, representing a \$75 million investment and resulting in 396 new affordable housing units. HIC manages all LIHTC units, including 208 under the Project-Based Voucher (PBV) program.

In 2021, CKHA was selected as a Moving to Work ("MTW") agency under Cohort II Tiered Rent Demonstration program.

For more details about CKHA and its rental assistance programs, please visit the Housing Authority's website at [www.ckha.com](http://www.ckha.com).

CKHA is requesting proposals from qualified firms to conduct a comprehensive Salary Comparability Study covering approximately 70 Administrative and Maintenance positions.

## II. RFP INFORMATION AT A GLANCE

Housing Authority Contact Person:	Mark E. Taylor, CEO/CO Email: <a href="mailto:mtaylor@ckha.com">mtaylor@ckha.com</a> Phone: 304.348.6451
How to Obtain the RFP:	Online at <a href="http://www.ckha.com">www.ckha.com</a> or via email from the person listed above.
Deadlines for Submitting Questions and Request for Interpretations:	No later than 3:00 p.m. on <b>July 16<sup>th</sup>, 2025</b> . Inquiries should be sent via email to <a href="mailto:mtaylor@ckha.com">mtaylor@ckha.com</a> . All addenda will be posted on the CKHA website ( <a href="http://www.ckha.com">www.ckha.com</a> ) by noon on <b>July 18<sup>th</sup>, 2025</b> .
How to Fully Respond to this RFP By Submitting a Proposal:	Proposals should be emailed to Mark E. Taylor, CO/CEO, at <a href="mailto:mtaylor@ckha.com">mtaylor@ckha.com</a> . The subject line of the email must read: "Salary Comparability Study"  Proposal submission requirements should be submitted in electronic .PDF format.
Proposal Submittal Deadline:	<b>August 1<sup>st</sup>, 2025</b> , no later than 3:00 p.m.

### **III. STATEMENT OF WORK**

#### **A. Salary Comparability Study**

##### **CKHA Compensation Philosophy and Background Context**

CKHA's most recent salary study established a foundational compensation philosophy that continues to guide the agency's approach to employee compensation. This philosophy emphasizes total compensation, incorporating the agency's robust benefits package, while remaining competitive in the local and regional labor market.

Key elements of CKHA's compensation philosophy include:

- Rewarding employee tenure to support retention and institutional knowledge.
- Advancing employees to the midpoint of their salary range as efficiently as possible, with slower growth beyond the midpoint to support fiscal responsibility.
- Recognizing the full value of benefits as part of overall compensation when assessing market comparability.

CKHA currently maintains 39 positions across 17 pay grades. Administrative staff work 37.5 hours per week, while maintenance employees work 40 hours per week. These structural elements must be considered when developing pay schedules, analyzing market data, and formulating recommendations.

The selected firm will work in close coordination with CKHA's CEO, Human Resources Coordinator, and designated staff to gather necessary data, but will independently conduct the research and produce the Salary Comparability Study and Final Report.

The study must include a review and update of all current job descriptions, which will serve as the foundation for establishing a modernized total compensation plan. All services must comply with applicable federal, state, and local laws, including the U.S. Department of Housing and Urban Development (HUD) and the Fair Labor Standards Act (FLSA).

The study should include:

- Reviewing CKHA's organizational structure, current staffing, reporting relationships, and future staffing plans.
- Using comparability data from established databases, government sources, and other relevant public sector benchmarks to ensure market-aligned salary evaluations. Position-specific comparisons should be used, rather than broad averages, to ensure an accurate alignment of responsibilities and qualifications.
- Proposing a methodology to ensure regional and local relevance, subject to CKHA approval.

**1. Preparation of Pay Schedule**

Develop or update pay schedules based on calculated market entry rates for all job classifications.

**2. Salary Recommendation and Range Development**

Propose recommended pay rates for each current CKHA employee based on an updated pay schedule. Recommend salary ranges for each position, with clear minimum, midpoint, and maximum thresholds.

**3. Employee Placement and Financial Impact Assessment**

Develop a methodology for assigning current employees within salary ranges. Consider tenure, performance, and market competitiveness. Assist CKHA in evaluating the financial and budget impacts of these placements.



#### **4. Incentive Compensation Plan**

If applicable, create an incentive compensation plan aligned with CKHA's organizational structure and strategic goals. Include clear implementation guidelines.

In developing the plan, CKHA asks that the following specific considerations be addressed:

- How should CKHA approach compensation placement for new hires with above-average education and experience? Should higher starting placement within the salary range be used to reflect qualifications that exceed minimum job requirements?
- Do you recommend offering an incentive for employees who successfully complete their probationary period?
- Should successful completion of job-required certifications within the first year qualify for a one-time or ongoing incentive?

The proposed should be financially sustainable, support CKHA's workforce goals, and be feasible for long-term administration.

#### **5. Report Preparation**

Prepare a comprehensive report that includes:

- Study objectives and methodology
- Summary of findings
- Entry pay rate calculations
- Recommended salary ranges by position
- Proposed salaries for current employees
- Incentive compensation plan (if applicable)
- Final pay schedule

#### **6. Draft Report Delivery**

Submit a draft report to the CEO for review. Revisions must be based on feedback from the CEO and the BOC.

## **7. Final Report Submission**

Provide six (6) printed copies and one (1) electronic copy of the final report, including all supporting documents, updated job descriptions, and final pay schedules.

## **8. Compensation System Maintenance**

Recommend a strategy for maintaining the compensation system, including methods for periodically reviewing and updating salary structures, job classifications, and related policies to ensure continued internal equity and market competitiveness.

## **B. Job Descriptions**

Review and revise approximately thirty-nine (39) job descriptions. Recommendations may include changes in job titles or the creation of new classifications. All job descriptions must comply with ADA and Section 504 standards.

### **1. Data Collection**

- Review existing job descriptions.
- Distribute a written survey to all employees to collect detailed information about current job duties.
- Validate survey data through follow-up discussions as needed. The selected firm may propose a methodology for conducting these discussions (e.g., one-on-one interviews, small group sessions, or other formats) to ensure accuracy.
- Interview supervisory staff to confirm that employee-reported duties align with the agency objectives.

### **2. Job Classification Analysis**

Analyze all collected data to determine necessary changes to job classifications or titles.

### **3. Job Description Development**

- Draft revised job descriptions for all positions.
- Submit drafts to CKHA for review and feedback.

## **C. Project Timeline**

All services outlined in this Statement of Work must be completed within 120 calendar days from the effective date of the contract.

**D. Meetings and Presentations to CKHA Staff and/or BOC**

As an optional work item and cost to CKHA, respondents must itemize pricing for the following in their cost proposal:

- 1) Study kick-off meeting (1/2 day) with CKHA staff in Charleston, WV
- 2) Study close-out meeting (1/2 day) with CKHA staff in Charleston, WV
- 3) Study presentation (1/2 day) to the BOC in Charleston, WV

These meetings are optional and may be selected at CKHA's discretion. Each must be listed as a separate line item in the cost proposal. CKHA reserves the right to conduct any of the meetings virtually, based on mutual agreement with the selected firm.

**E. Travel and Related Costs**

Except for the optional meetings outlined in Section D above, CKHA will not reimburse travel costs separately. All travel-related expenses must be included in the respondent's total cost proposal.

#### **IV. SUBMISSION REQUIREMENTS**

All proposals should be submitted to CKHA by **August 1<sup>st</sup>, 2025, no later than 3:00 p.m.** Proposals should be emailed to Mark E. Taylor, CEO, at [mtaylor@ckha.com](mailto:mtaylor@ckha.com). The subject line of the email must read: **"Salary Comparability Study"**

Proposal submission requirements are as follows:

- Submitted in electronic .PDF format.
- Pages numbered consecutively.
- Hard copy, facsimile or telephone proposals will not be accepted or considered.

**A. Respondent's Responsibilities – Contact with CKHA.** All communication and correspondence regarding this RFP must be directed exclusively to the CEO or his designee. Respondents are strictly prohibited from contacting any other CKHA staff member or official, including members of the BOC, regarding this RFP. Failure to comply with this requirement may result in disqualification of the respondents' proposal.

**B. Addenda.** All questions and requests for information must be submitted in writing to the CEO or his designee. Any respondent seeking clarification or interpretation of the RFP, Statement of Work, or any related documents must submit their request in writing. Oral explanations or instructions shall not generally be provided and, if provided, shall not be binding. Any clarifying information provided to a respondent will be shared publicly and provided to all respondents as an addendum on the CKHA website at [www.ckha.com](http://www.ckha.com).

All questions must be directed to Mark E. Taylor, CEO, no later than **3:00 p.m. on July 16<sup>th</sup>, 2025**. Inquiries should be submitted via email to [mtaylor@ckha.com](mailto:mtaylor@ckha.com).

All addenda will be posted on the CKHA website ([www.ckha.com](http://www.ckha.com)) by 12:00 (noon) on **July 18<sup>th</sup>, 2025**.

**C. Respondent's Responsibilities – Equal Employment Opportunity and Supplier Diversity.** Per 2 CFR 200.321, when possible, the recipient or subrecipient should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms (See U.S. Department of Labor's list) are considered as set forth below.

(a) Such consideration means:

- (1) These business types are included on solicitation lists;
- (2) These business types are solicited whenever they are deemed eligible as potential sources;
- (3) Dividing procurement transactions into separate procurements to permit maximum participation by these business types;
- (4) Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types;
- (5) Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring a contractor under a Federal award to apply this section to subcontracts.

**D. Minority Business (MBE) Goals.** The respondent submitting a proposal shall be aware of CKHA's goals of consistency with Presidential Executive Orders 11625, 12138, and 12432 and Section 3 of the HUD Act of 1968. CKHA's goal is to make efforts to ensure that small and minority-owned businesses, women's business enterprises, labor surplus area, business, and individuals or firms located in or owned in substantial part by person residing in the area of CKHA project are used when possible.

**E. Equal Opportunity Employment Statement.** Respondents and CKHA agree that there will not be discrimination as to race, color, religion, sex, age, creed or national origin, or disability regarding obligations, work and services performed under the terms of any contract ensuing from this RFP.

## **V. PROPOSAL FORMAT**

**Section Divider Proposal Submittal.** CKHA intends to evaluate proposals using a “Best Value” approach rather than solely on a “Lowest Cost” basis. As outlined in Section VI. Proposal Evaluation, CKHA will consider multiple factors, including but not limited to cost, when selecting the successful vendor.

To facilitate a thorough and efficient evaluation, all proposals submitted in response to this RFP must follow the numbered sequence outlined below. Each section must be clearly separated by labeled section dividers referencing the appropriate section number. Proposals must not include any services that conflict with requirements previously issued by CKHA or published through addenda.

Each proposal must include responses to the following sections, in the order specified. Respondents are expected to provide complete detailed information to support evaluation. Incomplete, non-conforming, and/or vague responses may result in rejection in favor of more fully developed proposals.

Any exhibits or supplemental materials not explicitly requested in this RFP, but deemed relevant by the respondent, should be included under Section 9: (Optional) Other Information at the end of the proposal.

Respondents should also review and adhere to the confidentiality limitations described in Section VI. Proposal Evaluation.

### **Section 1 – Executive Summary**

The Executive Summary must clearly demonstrate the respondents’ understanding of this RFP and CKHA objectives. At a minimum, the summary should include:

- An overview of the respondent’s firm
- Identification of the respondent and/or any sub-contractors
- A description of the project team’s responsibilities
- A summary of the services to be provided

The Executive Summary must be presented on the respondent’s official company letterhead.

#### **Additional Requirement:**

Attach the completed **Attachment A – Profile of Vendor Form** under this section.

## **Section 2 – Experience, Qualifications, and Personnel Listing**

Under this section, the respondent must provide detailed information outlining their relevant experience, qualifications, and personnel capabilities to perform the required work. This section should include:

- The number of years the firm has been in operation
- Relevant qualifications and experience of the firm and its ability to deliver the required services
- Names, qualifications, education, skills, and experience of key staff members who will be directly involved in providing the services
- Professional resumes for key personnel, as referenced in items 4. and 5. of

### **Attachment A - Profile of Vendor Form.**

This ensures a thorough evaluation of the respondent's expertise and ability to meet CKHA's needs.

## **Section 3 –Statement of Work**

Provide a detailed explanation of how the respondent will fulfill the requirements outlined in the Statement of Work. This section should include a clear breakdown of tasks, deliverables, responsible personnel, and timelines related to the completion of the Salary Comparability Study.

## **Section 4 – Implementation Plan**

Provide a detailed plan outlining how the proposer will execute the Salary Comparability Study. The plan should describe the approach, key activities, responsible personnel, deliverables, and estimated timeframes for each phase of the project. The implementation plan must demonstrate how the work will be completed within the 120-day project timeline specified in the Scope of Work.

## **Section 5 – Costs and Fees Proposal**

Provide a detailed, itemized breakdown of all one-time costs associated with the proposed services for the Salary Comparability Study. Each cost category must be clearly described to reflect the full scope of work. All fees should be clearly defined and organized to allow for a thorough and transparent evaluation of the financial proposal.

## **Section 6 – References**

List at least three (3) businesses references from organizations for which the respondent has recently delivered similar services. For each reference, include the following information:

- Business Name
- Contact Person's Name
- Title of Contact Person
- Phone number
- Email addresses

References should be able to verify the respondent's experience, performance, and ability to successfully deliver the proposed services.

## **Section 7 – Required HUD Forms**

The respondent must submit the following forms under this tab:

- **Form HUD-5369-B, Instructions to Offerors Non-Construction** – Read and initial each page indicating that you have read and agree with the contents.
- **Form HUD-5370-C, General Contract Conditions for Non-Construction (Section I and II)** - Read and initial each page indicating that you have read and agree with the contents.

## **Section 8 – (Optional) Other Information**

Respondents may use this section to provide any additional information they consider relevant to CKHA's evaluation of their proposal for the Salary Study Comparability Study. This may include, but not limited to, specialized expertise in public sector compensation analysis, value-added services, case studies from similar projects, or other supporting documentation that highlights the respondent's ability to meet CKHA's specific needs.



## VI. PROPOSAL EVALUATION

**A. Evaluation Factors.** The following factors will be used by CKHA to evaluate each proposal submitted. Points will be awarded for each factor based on the documentation provided in the respondents' proposal:

Factor No.	Max Point Value	Factor Type	Scoring Criteria
1	15 Points	Subjective (Technical)	<b>Approach, Presentation, and Scope of Services</b>
2	25 Points	Subjective (Technical)	<b>Experience conducting Organizational Reviews and Salary Studies</b>
3	25 Points	Subjective (Technical)	<b>Experience Conducting Reviews, Analysis, and Development for Housing Authorities (HA)</b>
4	20 Points	Subjective (Technical)	<b>Qualifications of the Respondents</b>
5	15 Points	Objective	<b>Cost</b>
	100 Points		

**NOTE:** Points for each Subjective Factor will be awarded by the appointed evaluation committee members based on their individual assessment after thoroughly reviewing the information submitted in each respondents' proposal.

## B. Evaluation Method

- 1) **Initial Evaluation for Responsiveness.** Each proposal received will first be evaluated for responsiveness (i.e., meets the minimum of requirements).
- 2) **Evaluation Packet for Proposals Deemed Responsive.** Internally, an evaluation packet will be prepared for each evaluator, including the following documents: Score Sheet for each respondent and a copy of all pertinent RFP documents.
- 3) **Evaluation Committee.** CKHA plans to form a minimum of three-person committee to evaluate each responsive proposal submitted in response to this RFP. **PLEASE NOTE:** Respondents will not be informed of the identity of any evaluation committee members at any time during or after the RFP process. If, by chance, a respondent becomes aware of the identity of any committee member(s), they **MUST NOT** contact or discuss anything related to this RFP with them. As detailed in Section IV. Submission Requirements, the designated CO/CEO is the only person at CKHA that the respondents should contact pertaining to this RFP. Failure to comply with this requirement may result in the respondent(s) disqualification from consideration for award.
- 4) **Evaluation.** It is anticipated that the CO/CEO will evaluate and award points pertaining to Evaluation Factor No. 5 (the "Objective" Factor); and that the appointed evaluation committee, independent of the CO/CEO or any other person at CKHA, will evaluate the responsive proposals submitted and award points pertaining to Evaluation Factors No. 1-4 (the "Subjective" Factors). Upon final completion of the proposal evaluation process, the evaluation committee will forward the completed evaluations to the CO/CEO.
- 5) **Potential "Competitive Range" or "Best and Finals" Negotiations.** CKHA reserves the right to, as detailed within Section 7.2N through 7.2R of the HUD Procurement Handbook 7460.8 Rev 2, conduct a "Best and Finals" Negotiation, which may include oral interviews, with all respondents deemed to be in competitive range. Any respondent deemed not to be in competitive range shall be notified of such in writing by CKHA in a timely manner, but in any case, within no longer than five (5) business days after the beginning of such negotiations with the respondent(s) deemed to be in competitive range.
- 6) **Determination of Top-Ranked Respondent.** The subjective points awarded by the evaluation committee will typically be combined with the objective points awarded by the CO/CEO to determine the final rankings. If the evaluation meets the CEO's satisfaction, the final rankings may be presented to CKHA's BOC for approval at a scheduled meeting. Contract negotiations may be conducted, at CKHA's discretion, either before or after BOC approval.

- 7) **Minimum Evaluation Results.** To be considered to receive an award a respondent must receive a total calculated average of at least 70 points out of the 100 total possible points detailed in Section VI. Proposal Evaluation.
- 8) **Ties.** In the case of a tie in points awarded, the award shall be decided as detailed within Section 6.12.C of the HUD Procurement Handbook 7460.8 REV 2, by “drawing lots or other random means of selection.”
- 9) **Notice of Results of Evaluation.** If an award is completed, all respondents will receive by email a Notice of Results of Evaluation. Such notice shall inform all respondents of the following: (1) Which respondent received the award, (2) Where each respondent placed in the process as a result of the evaluation of the proposals received, (3) The cost or financial offers received from each respondent, and (4) Each respondent’s right to a debriefing and to protest.
- 10) **Restrictions.** All people having familial (including in-laws) and/or employment relationships (past or current) with principals and/or employees of a respondent entity will be excluded from participation of the CKHA evaluation committee. Similarly, all persons having ownership interest in and/or contract with a respondent entity will be excluded from participation in the CKHA evaluation committee.

## **VII. CONTRACT AWARD; CONTRACT TERMS & CONDITIONS:**

**A. Contract Award Procedure.** If a contract is awarded pursuant to this RFP, CKHA will submit a recommendation for approval or disapproval to the BOC at a scheduled Board meeting, as required based on the award amount. The contract award shall be subject to the adoption of a formal resolution by the BOC, at their sole and absolute discretion. Execution of the contract documents by the appropriate parties shall constitute the official record of the agreement.

**B. Contract Conditions.** The following provisions should be considered mandatory and non-negotiable conditions of any contract awarded by CKHA pursuant to this RFP:

- 1. Contract Form.** The successful vendor will be required to submit its standard contract form for review. CKHA reserves the right to review, request modifications to, and negotiate any terms or conditions in the vendor's proposed agreement to ensure compliance with applicable laws, regulations, and CKHA's internal policies. At a minimum, the Final Contract shall include, and shall not be inconsistent with, the terms & conditions set forth herein and attached hereto, including, but not limited to, the terms & conditions set forth in CKHA's Addendum referenced in Section VII.B.6 and attached to this RFP. If vendor does not have a standard contract, the Parties will cooperate in good faith to draft and finalize a contract, subject to the requirements set forth herein. Submission of a proposal indicates the respondent's willingness to engage in good-faith negotiations and to make reasonable changes as required by CKHA's legal and procurement requirements. Final contract execution is contingent upon successful negotiation and CKHA's approval.
- 2. HUD Forms.** Please note that CKHA has no legal right or ability to (and will not) at any time modify or delete any clauses contained within ANY of the HUD forms included as part of this RFP.
- 3. Assignment of Personnel.** CKHA shall retain the right to demand and receive a change in personnel assigned to the work if CKHA believes that such change is in the best interest of CKHA and the completion of the contracted work.
- 4. Delivery of Services; Time and Location.** CKHA shall retain the right to determine the days, hours, and locations that the successful vendor shall provide the services described in this RFP.
- 5. Unauthorized Sub-Contracting Prohibited.** The Contractor shall not assign any right, not delegate any duty for the work proposed pursuant to this RFP (including, but not limited to, selling or transferring the contract) without the prior written consent of the CEO. Any purported assignment of interest or delegation of duty, with the prior written consent of the CEO shall be void and may result in the cancellation of the contract with CKHA, or may result in full or partial forfeiture of funds paid to the Contractor as a result of the proposed contract; either as determined at the sole discretion of the CEO.
- 6. Addendum.** The final contract with the successful vendor shall contain, and shall not be inconsistent with, the terms & conditions set forth in CKHA's Addendum, Attachment D hereto. Submission of a proposal indicates vendor's acknowledgment that it has reviewed these terms & conditions, that it understands the requirement that these terms & conditions will be a part of the final contract, and that it agrees to the inclusion of these terms & conditions in the final contract.

- C. Contract Period.** This contract is for a one-time project to complete the Salary Comparability Study. The contract will remain in effect until all deliverables outlined in the Scope of Work have been satisfactorily completed and accepted by CKHA. There are no renewal terms associated with this contract.
- D. Prompt Return of the Contract Documents.** Any and all documents required to complete the contract, including contract signature by the successful vendor, shall be provided to CKHA within ten (10) business days of notification by CKHA.

**E. Licensing and Insurance Requirements.** Prior to the award (but not as a part of the proposal's submission) the successful vendor will be required to provide an appropriate level of insurance with the following minimums:

Insurance	Coverage Details	Required Coverage Amounts
Professional Liability Insurance	An original certificate showing the respondent's professional liability and/or "errors and omissions" coverage.	Minimum of \$1,000,000 each occurrence, general aggregate minimum limit of \$1,000,000. With a commercially reasonable deductible.
Commercial General Liability Insurance	An original certificate evidencing General Liability coverage, naming CKHA as an additional insured, together with the appropriate endorsement to said policy reflecting the addition of CKHA as an additional insured under said policy.	Minimum of \$1,000,000 each occurrence, general aggregate minimum limit of \$1,000,000, together with damage to premises and fire damage of \$50,000 and medical expenses of any one person of \$5,000), with a commercially reasonable deductible.
Workers' Compensation Insurance	An original certificate evidencing the respondent's current worker's compensation insurance carrier and coverage amount. (NOTE: Workers Compensation Insurance will be required of any Contractor that has employees other than just the owner working on-site to provide the services).	As required by State Law
Automobile insurance	An original certificate showing the respondent's automobile insurance coverage. For every vehicle utilized during the terms of this program, when not owned by the entity.	Combined single limit of \$1,000,000. Each vehicle must have evidence of coverage with limits of no less than \$100,000/\$300,000 and medical pay of \$5,000.
Cyber Liability	An original certificate showing coverage shall include, but not limited to, claims involving infringement of intellectual property, infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, extortion and network security. The policy should provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limit sufficient to respond to these obligations.	Minimum of \$2,000,000 per occurrence or claim, \$2,000,000 aggregate.
City/County/State Business License	If applicable, a copy of the Respondent's business license allowing that entity to provide such services within CKHA's jurisdiction.	

## VIII. ADDITIONAL CONDITIONS; PROTESTS

**A. Confidential Information.** The firm acknowledges that CKHA is a public entity and is subject to mandatory disclosure of certain information upon request under W.Va. Code § 29B-1-1 et seq. (the "Freedom of Information Act") and W.Va. Code § 6-9A-1 et seq. (the "Open Governmental Proceedings Act"). If CKHA is requested or required to disclose any information received by CKHA involving the RFP, solicitation process, final contract, or other related information which may be considered confidential by firm, CKHA will promptly notify firm of each such request or requirement so that firm may seek an appropriate protective order or other appropriate relief. To the extent permitted by Federal, State and local laws, CKHA agrees to cooperate fully with firm in seeking any protective order or other remedy. If, in the absence of a protective order or the receipt of a waiver hereunder, CKHA is, nonetheless, compelled to disclose confidential information, it may disclose such information pursuant to such request or requirement without liability hereunder.

**B. Reservation of Rights.** CKHA expressly reserves the following rights and limitations:

- 1. Right to Reject, Waive, or Terminate the RFP.** CKHA reserves the right to reject any or all proposals, to waive any informality in the RFP process, or to terminate the RFP process at any time, if deemed by CKHA to be in its best interest.
- 2. Right to Not Award.** CKHA reserves the right to not award a contract pursuant to this RFP.
- 3. Right to Retain Proposals.** CKHA reserves the right to retain all proposals submitted and prohibit withdrawal for a period of sixty (60) days following the proposal deadline, without the written consent of the CKHA Contracting Officer (CO).
- 4. Right to Negotiate Fees and Terms.** CKHA reserves the right to negotiate fees and other terms with the selected respondent. The fees proposed by the top-rated respondent may serve as the starting point for negotiations at CKHA's discretion. If negotiations with the top-rated respondent do not conclude successfully within five (5) business days, CKHA may, at its discretion, terminate those negotiations and begin negotiations with the next highest-rated respondent.
- 5. Right to Reject Any Proposal.** CKHA reserves the right to reject and not consider any proposal or respondent that does not meet the requirements of this RFP, including but not necessarily limited to incomplete proposals and/or respondents offering alternate or non-requested services.

**6. No Obligation to Compensate.** Respondent acknowledges and agrees that CKHA shall have no obligation to compensate any respondent for any costs incurred in responding to this RFP.

**C. Protest.** Any respondent who believes they have been aggrieved in the RFP solicitation process or in the award of a contract has the right to file a formal protest. To be eligible, the protestor must submit a timely protest in compliance with the requirements set forth hereinafter.

**1. Submission Requirements.** All protests must be submitted in writing and include the following elements:

**a) Exact Reason for the Protest:** Clearly identify the specific action or decision being contested, including why it is believed to be improper or unfair. The protestor should cite relevant sections of the RFP and applicable law, rules, regulation, or procedure.

**b) Supporting Documentation:** Include all supporting documentation or evidence necessary to substantiate the claims made.

**c) Corrective Action Requested:** Specify the corrective action the protestor believes should be taken.

**d) Eligibility and Timing of Protests:**

**(i.) For Protests of the Solicitation Process prior to Contract Award:** Only respondents who have submitted a timely and responsive proposal that complies with the requirements of the RFP are eligible to file a protest. Protests must be submitted on or before the submission deadline for the RFP or shall be considered voluntarily waived. Any protest submitted after the submission date will be considered untimely, shall not constitute a valid protest, and will not be considered.

**(ii.) For Protests of the award of a contract to the selected respondent.** Only respondents who have submitted a timely and responsive proposal that complies with the requirements of the RFP are eligible to file a protest. Protests must be submitted within ten (10) calendar days of the BOC's award of the contract by Resolution adopted at a public meeting or shall be considered voluntarily waived. Any protest submitted after the deadline set forth herein will be considered untimely, shall not constitute a valid protest, and will not be considered.



**e) Review Process:** Protests must be submitted in writing to the CEO, who will issue a written decision after review. At the CEO's discretion, the procurement process may be suspended pending resolution of the protest if warranted.

Incomplete protests or those that do not meet the eligibility requirements outlined above will not be considered.

All protest submissions must be clearly marked "Proposal Protest" and sent to:

**APPEAL OF RFP NO. 2025-002**  
**Charleston-Kanawha Housing Authority**  
**Attn: Mark E. Taylor, CEO**  
**1525 Washington St. W.**  
**Charleston, WV 25387**

## ATTACHMENT A - PROFILE OF VENDOR FORM

**(This Form must be fully completed and placed under Section 1)**

1. Prime ☐ Sub-contractor ☐ (This form must be completed by and for each).

2. Name of Vendor: \_\_\_\_\_

Street Address, City, State, Zip: \_\_\_\_\_

E-Mail: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

3. Please attach a brief biography/resume of the company, including the following information: (a) Year Vendor Established; (b) Former Name and Year Established (if applicable); (c) Name of Parent Company and Date Acquired (if applicable).

4. Identify Principals/Partners in Firm (submit in Section 2 a brief professional resume for each):

NAME	TITLE	% OF OWNERSHIP

5. Identify the individual(s) that will act as project manager and any other supervisory personnel that will work on project; please submit in Section 2 a brief resume for each. (Do not duplicate any resumes required above):

NAME	TITLE

6. Federal Tax ID No.: \_\_\_\_\_

7. Business License No.: \_\_\_\_\_

8. WV Business Registration Certificate No.: \_\_\_\_\_

9. Worker's Compensation Insurance Carrier: \_\_\_\_\_

Policy No.: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

10. Commercial General Liability Insurance Carrier: \_\_\_\_\_

Policy No.: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

11. Professional Liability Insurance Carrier: \_\_\_\_\_

Policy No.: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

12. Has your firm or any member of your firm been a party to litigation with a public entity or agency? ☐ Yes ☐ No Initials \_\_\_\_\_

If yes, when, with who and state the circumstances and any resolution.

13. Is your firm currently involved in local, County, State, or Federal mortgage foreclosure proceedings or currently 90 days in arrears on a local public or private loan?  
☐ Yes ☐ No Initials \_\_\_\_\_  
If yes, when, with who and state the circumstances and any resolution.
14. Is your firm currently in REM Foreclosure or substantial tax arrears with a City/County of local jurisdiction? ☐ Yes ☐ No Initials \_\_\_\_\_  
If yes, when, with who and state the circumstances and any resolution.
15. Has, or is this firm or any member of your firm currently in default on any contract obligation or agreement of any kind entered into with a City/County or local public entity or agency?  
☐ Yes ☐ No Initials \_\_\_\_\_  
If yes, when, with who and state the circumstances and any resolution.
16. In the last ten (10) years, has your firm or any member of your firm failed to qualify as a responsible Firm or refused to enter into a contract after an award has been made, privately or with any government agency?  
☐ Yes ☐ No Initials \_\_\_\_\_  
If yes, when, with who and state the circumstances and any resolution.
17. In the last seven (7) years, has your firm filed a bankruptcy petition or been the subject of involuntary bankruptcy proceedings?  
☐ Yes ☐ No Initials \_\_\_\_\_  
If yes, when, with who and state the circumstances and any resolution.
18. In the last ten (10) years, has your firm failed to file any required tax returns, or failed to pay any applicable Federal, State, or County fees?  
☐ Yes ☐ No Initials \_\_\_\_\_  
If yes, when, with who and state the circumstances and any resolution.
19. Has your firm or any member of your firm been convicted for fraud, bribery, or grand larceny?  
☐ Yes ☐ No Initials \_\_\_\_\_  
If yes, when, with who and state the circumstances and any resolution.
20. Has your firm or any member of your firm been cited for substantial Building Code Violations or been involved in litigation related to properties owned by the firm, or by any entity or individual associated with the firm?  
☐ Yes ☐ No Initials \_\_\_\_\_  
If yes, when, with who and state the circumstances and any resolution.
21. Has your firm or any member of your firm ever sued or been sued by Charleston-Kanawha Housing Authority or its affiliated entities?  
☐ Yes ☐ No Initials \_\_\_\_\_  
If yes, when, with who and state the circumstances and any resolution.
22. Has your firm or any member of your firm ever had a claim brought against for breach of contract or nonperformance?  
☐ Yes ☐ No Initials \_\_\_\_\_  
If yes, when, with who and state the circumstances and any resolution.

23. Debarred Statement. Has this firm or any of its principal(s) ever been debarred from providing services by the Federal Government, any state government, the State of West Virginia, or any local government agency within or outside the State of West Virginia? Additionally, has this firm ever been de-designated as a developer for any government-sponsored or publicly assisted project?

☐ Yes

☐ No

Initials \_\_\_\_\_

If "Yes," please attach a full detailed explanation, including dates, circumstances and current status.

24. Felony Disclosure. Has any principal(s) or any person(s) proposed to perform the work ever been convicted of a felony? PLEASE NOTE: CKHA reserves the right to not make an award to any respondent that has staff who has been convicted of a felony if CKHA feels that doing such is in its best interest.

☐ Yes

☐ No

Initials \_\_\_\_\_

If "Yes," please attach a full detailed explanation, including dates, circumstances and current status.

25. Disclosure Statement. Does this firm or any of its principal(s) thereof have any current or past personal or professional relationship with any Commissioner or officer of the Housing Authority? ☐ Yes ☐ No

Initials \_\_\_\_\_

If "Yes," please attach a full detailed explanation, including dates, circumstances and current status.

26. Addendum. Have you reviewed the addendum provided in Attachment D and do you agree to sign it upon execution of the contract if awarded?

☐ Yes

☐ No

Initials \_\_\_\_\_

27. Non-Collusive Affidavit: The undersigned party submitting this competitive proposal hereby certifies that such proposal is genuine and not collusive and that said respondent entity has not colluded, conspired, connived or agreed, directly or indirectly, with any respondent or person, to put in a sham proposal or to refrain from proposing, and has not in any manner, directly or indirectly sought by agreement or collusion, or communication or conference, with any person, to fix the proposal price or affiant or of any other respondent, to fix overhead, profit or cost element of said proposal price, or that of any other respondent or to secure any advantage against CKHA or any person interested in the proposed contract, and that all statements in said proposal are true.

Initials \_\_\_\_\_

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

Initials \_\_\_\_\_

## **FIRM'S STATEMENT**

The undersigned Firm hereby states that by completing and submitting this form and all other documents within this proposal, they are verifying that all information provided herein is, to the best of their knowledge, true and accurate, and that if CKHA discovers that any information entered herein to be false, such shall entitle CKHA to not consider or award or to cancel any award with the undersigned party.

Further, by completing and submitting the proposal, the undersigned Firm thereby agreeing to abide by all terms and conditions pertaining to this RFP as issued by CKHA.

Pursuant to this RFP, and all attachments, and pursuant to all completed documents submitted, including these forms and all attachments, the undersigned proposes to supply CKHA with the services described herein for the fee(s) entered.

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

Office Phone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_ Email address: \_\_\_\_\_

Business Address: \_\_\_\_\_

Print Name: \_\_\_\_\_ Signature: \_\_\_\_\_



**ATTACHMENT B – HUD REQUIRED FORMS**





# Instructions to Offerors Non-Construction

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



- 03291 -

## 1. Preparation of Offers

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

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

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

## 2. Submission of Offers

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

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

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

## 3. Amendments to Solicitations

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

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

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

## 4. Explanation to Prospective Offerors

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

## 5. Responsibility of Prospective Contractor

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The HA may

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

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

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

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

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

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

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

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

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

[Describe bid or proposal preparation instructions here:]

# General Conditions for Non-Construction Contracts

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

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

Office of Public and Indian Housing

Office of Labor Relations

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

Public Reporting Burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB number. This form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 2 CFR 200, and those requirements set forth in Section 3 of the Housing and Urban Development Act of 1968 and its amendment by the Housing and Community Development Act of 1992, implemented by HUD at 24 CFR Part 75. The form is required for non-construction contracts awarded by Public Housing Agencies (PHAs). The form is used by PHAs in solicitations to provide necessary contract clauses and allows PHAs to enforce their contracts. Comments regarding the accuracy of this burden estimate and any suggestions for reducing this burden can be sent to the Reports Management Officer, Office of Policy Development and Research, REE, Department of Housing and Urban Development, 451 7th St SW, Room 4176, Washington, DC 20410-5000. When providing comments, please refer to OMB Approval No. 2577-0157. Do not send this completed form to either of these addressees. The information collected will not be held confidential.

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

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

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

#### 1. Definitions

The following definitions are applicable to this contract:

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

#### 2. Changes

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

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

#### 3. Termination for Convenience and Default

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

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

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

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

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

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

#### 6. Energy Efficiency

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

#### 7. Disputes

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

#### 8. Contract Termination; Debarment

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

#### 9. Assignment of Contract

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

#### 10. Certificate and Release

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

#### 11. Organizational Conflicts of Interest

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

#### 12. Inspection and Acceptance

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

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

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

### 13. Interest of Members of Congress

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

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

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

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

(a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

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

(v) The prohibition does not apply as follows:

(1) Agency and legislative liaison by  
Own Employees.

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

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

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

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

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

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

(iii) Selling activities by independent sales representatives.

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

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

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

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

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

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



## 16. Equal Employment Opportunity

During the performance of this contract, the

Contractor/Seller agrees as follows:

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

[contractor/seller] will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The [contractor/seller] agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

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

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

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

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

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

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

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

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

## 17. Equal Opportunity for Workers with Disabilities

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

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

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

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

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

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

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

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

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

#### **18. Dissemination or Disclosure of Information**

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

#### **19. Contractor's Status**

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

#### **20. Other Contractors**

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

#### **21. Liens**

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

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

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

#### **23. Procurement of Recovered Materials**

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered



materials practicable consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract



# 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. 1/31/2027)

Public Reporting Burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB number. This form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 2 CFR 200, and those requirements set forth in Section 3 of the Housing and Urban Development Act of 1968 and its amendment by the Housing and Community Development Act of 1992, implemented by HUD at 24 CFR Part 75. The form is required for maintenance contracts awarded by Public Housing Agencies (PHAs). The form is used by PHAs in solicitations to provide necessary contract clauses and allows PHAs to enforce their contracts. Comments regarding the accuracy of this burden estimate and any suggestions for reducing this burden can be sent to the Reports Management Officer, Office of Policy Development and Research, REE, Department of Housing and Urban Development, 451 7th St SW, Room 4176, Washington, DC 20410-5000. When providing comments, please refer to OMB Approval No. 2577-0157. Do not send this completed form to either of these addressees. The information collected will not be held confidential.

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

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

- 1) Non-construction contracts (*without* maintenance) greater than \$250,000 - use Section I;
- 2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 905.200) greater than \$2,000 but not more than \$250,000 - use Section II; and
- 3) Maintenance contracts (including nonroutine maintenance), greater than \$250,000 - use Sections I and II.

### Section 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

#### 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 training/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.



## **ATTACHMENT C – CKHA ADDENDUM EXAMPLE**





## ADDENDUM TO \_\_\_\_\_

This is an Addendum to (ENTER DATE/TITLE OF THE AGREEMENT) \_\_\_\_\_ (the "Agreement") between ENTER CONTRACTOR NAME ("Contractor") and the Charleston-Kanawha Housing Authority ("CKHA") (collectively, the "Parties"). In the event of a conflict between this Addendum and the Agreement, this Addendum shall control:

1. **DISPUTE RESOLUTION, JURISDICTION AND VENUE** - Any references to arbitration contained in the Agreement are hereby deleted. The Parties agree that any breach, default, or other dispute arising from or related to the Agreement or this Addendum shall be subject to the terms, conditions, and process set forth herein.

In the event of any breach, default, or other dispute arising from or related to the Agreement or this Addendum, the Parties mutually agree that they will exercise good faith and commercially reasonable efforts to resolve said breach, default or other dispute through consultation and negotiation. If negotiation does not resolve the dispute, either Party may request non-binding mediation. If requested, the Parties agree to participate in good faith in non-binding mediation performed by a mutually agreed third-party mediator and in a manner mutually agreed to by the Parties. The mediation may be conducted remotely using available virtual technology with each Party, and/or the mediator, in a different physical location. Contractor acknowledges and agrees that any proposed resolution reached through consultation, negotiation, or mediation may be subject to approval by CKHA's governing body during a public meeting.

Any dispute which cannot be resolved between the Parties through consultation, negotiation or mediation within a reasonable time may be submitted to a court of competent jurisdiction as set forth herein. Notwithstanding, nothing shall prevent either of the parties from resorting to judicial proceedings if interim relief from a court of competent jurisdiction is necessary to prevent immediate, serious, and irreparable injury to one of the Parties or to others. If the Parties cannot resolve the matter without litigation, the Parties acknowledge, consent, and agree that either the Circuit Court of Kanawha County, West Virginia, or the Federal District Court for the Southern District of West Virginia shall have exclusive jurisdiction to resolve the breach, default or other dispute giving rise to the litigation.

2. **NO INDEMNITY/HOLD HARMLESS BY CKHA; CONTRACTOR INDEMNITY**- The Parties acknowledge and agree that any clause requiring CKHA to indemnify, defend or hold harmless Contractor or any other party, entity, or person is void, unenforceable, and deleted in its entirety. CKHA, a public body corporate and politic, and a political subdivision of the State of West Virginia, cannot lawfully indemnify an entity or person for potential future liability. The Parties further agree that, to the full extent permitted by law, Contractor shall indemnify, defend, and hold harmless CKHA from and against any and all liability and damages of any kind whatsoever arising from the negligent or intentional acts or omissions of Contractor, its officers, employees, or agents. This indemnity obligation is in addition to, not in lieu of, any indemnity obligations of Contractor set forth in the Agreement.

3. **GOVERNING LAW** - The Agreement and this Addendum shall be deemed to be executed in the City of Charleston, State of West Virginia, and shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law in the Agreement.

4. **TAXES** – Any provision in the Agreement requiring CKHA to pay taxes is deleted. As a political subdivision of the State, CKHA is exempt from Federal, State, and local taxes and will not pay taxes for (or reimburse to) Contractor or any other party, including individuals, nor will CKHA file any tax returns or reports on behalf of Contractor or any other party.
5. **PAYMENT** - Any references to prepayment are deleted. Payment will be in arrears.
6. **INTEREST** - Should the Agreement include a provision for interest on late payments, CKHA agrees to pay at the interest rate set forth in the Agreement OR the maximum applicable legal rate under West Virginia law, whichever is less. All other references to payment of interest, late charges, and/or late penalties or fees are deleted.
7. **SUBROGATION** - Any provision in the Agreement providing for subrogation against CKHA by Contractor or any third-party is deleted. CKHA is immune from subrogation pursuant to West Virginia law.
8. **FISCAL YEAR FUNDING** - CKHA is a government entity operating on a fiscal year basis. Service(s) performed and/or equipment provided under the Agreement may be continued in succeeding fiscal years for the term of the Agreement, contingent upon funds being appropriated by CKHA' governing body or otherwise being available for the service(s) and/or equipment. In the event funds are not appropriated or otherwise available for the service(s) and/or equipment, the Agreement shall terminate without penalty or prejudice to CKHA on the next occurring March 31. After that date, the Agreement shall terminate and shall no longer bind or be enforceable against CKHA, including, but not limited to, any and all terms that would require additional or subsequent payment(s) or obligation(s) by/of CKHA. Contractor agrees that non-appropriation or non-funding shall not be considered an event of default. CKHA agrees to exercise good faith and commercially reasonable efforts to have any amounts contemplated by the Agreement included in CKHA's annual budget(s) during the term of the Agreement.
9. **STATUTE OF LIMITATION** - Any clause limiting the time in which CKHA may bring suit against Contractor or any lessor, individual, or third-party party is deleted. CKHA expressly preserves its right to bring any and all legal action deemed necessary or appropriate by CKHA as permitted by applicable law.
10. **SIMILAR SERVICES** - Any provision limiting CKHA's right to obtain similar services and/or equipment (even in the event of default or non-funding by CKHA) during the term of the Agreement is hereby deleted. CKHA reserves the right to seek and obtain similar services at any time as deemed necessary or appropriate by the governing body of CKHA.
11. **ATTORNEY FEES** – Under no circumstances shall CKHA be responsible for payment of attorney's fees, including any related costs or expenses, of Contractor or of any third-party. Any different or conflicting provision(s) in the Agreement is null and void, and is deleted.
12. **ASSIGNMENT** - Notwithstanding any clause to the contrary: CKHA reserves the right to assign the Agreement, or any portion thereof, to another CKHA or affiliated government agency, board or commission upon proving Contractor with thirty (30) days written notice prior to the assignment; and Contractor agrees that Contractor shall be required to obtain written consent of CKHA, which shall not be unreasonably withheld, prior to assigning the Agreement, or any portion thereof, to a non-affiliated third-party.

13. **LIMITATION OF LIABILITY** - CKHA, as a public body corporate and politic, and a political subdivision of the State, cannot agree to assume the potential liability of Contractor or of any other party. Accordingly, any provision limiting the Contractor's liability for direct damages or limiting the Contractor's liability under a warranty to a certain dollar amount or to the amount paid, or to be paid, by CKHA pursuant to the Agreement is hereby deleted. In addition, any limitation of Contractor's liability is null and void to the extent that it precludes or otherwise limits any action for injury to persons or for damages to personal property.
14. **RISK OF LOSS** – The risk of loss of any equipment or materials provided to CKHA under the Agreement shall not pass from Contractor (or any third party) to CKHA until after delivery to/possession by CKHA and CKHA has had a reasonable opportunity to inspect the equipment or materials.
15. **RIGHT TO CURE** – CKHA shall not be deemed to be in default of the Agreement until and unless written notice of the alleged default is received by CKHA, CKHA is provided with a reasonable opportunity to cure the alleged default, and CKHA fails to cure the alleged default.
16. **RIGHT TO TERMINATE FOR CAUSE OR CONVENIENCE** - CKHA shall have the right to terminate the Agreement as a result of Contractor's material breach of the Agreement upon reasonable written notice to Contractor and Contractor's failure to cure such breach within a reasonable period of time. Upon termination for cause, CKHA shall have no further obligation to Contractor beyond what is required by applicable law. CKHA shall also have the right to terminate the Agreement for convenience upon thirty (30) days written notice to Contractor, but will be legally responsible to reimburse Contractor for actual costs incurred, including, but not limited to, fees for services, parts, labor, and travel charges, or losses sustained by Contractor, including Contractor's reasonable and demonstrated profit and/or any amounts due or already paid by Contractor to any third-party to facilitate Contractor's performance pursuant to the Agreement, from the effective date of termination through the end of the fiscal year in which termination for convenience occurs.
17. **TERMINATION/CANCELLATION CHARGES** - Any provision requiring CKHA to pay a fixed amount, or to pay for any remaining term of the Agreement, or liquidated damages, or any similar payment/penalty/fee (regardless of the wording) upon termination (early or otherwise) of the Agreement is hereby deleted. CKHA may only agree, and shall only be legally responsible, to reimburse Contractor for actual costs incurred, including, but not limited to, fees for services, parts, labor, and travel charges, or losses sustained, up to the effective date of termination (during the current fiscal year) due to wrongful termination by CKHA.
18. **RENEWAL** - Any reference to automatic renewal is hereby deleted. The Agreement may be renewed only upon authorized and mutual written agreement of the parties.
19. **INSURANCE** - Any provision requiring CKHA to insure Contractor, and/or to insure any equipment or property of any kind and name the Contractor as beneficiary or as an additional insured is hereby deleted. In addition to, and not in lieu of, any insurance requirements required of Contractor in the Agreement and/or pursuant to an RFP issued by CKHA, Contractor shall obtain and maintain during the term of the Agreement General Liability Insurance in the minimum amount of \$1,000,000.00 and shall name CKHA as an additional named insured for purposes of Contractor's indemnity obligations set forth in this Addendum. To the extent Contractor's insurance obligations set forth in the Agreement require anything less than is required by this Addendum, Contractor shall comply with this Addendum in addition to, and not in lieu of, Contractor's insurance obligations set forth in the Agreement.

20. **RESPOSSESSION/RIGHT TO NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, CKHA does recognize a right of repossession upon default and with notice.

21. **NO WAIVER OF RIGHTS, DEFENSES, IMMUNITIES** – Anything in the Agreement, express or implied, requiring CKHA to waive any right, privilege, immunity, or defense afforded CKHA under any applicable law or otherwise commonly available to CKHA, is declared null and void, and is deleted. CKHA expressly preserves for its benefit any and all rights, privileges, immunities, or defenses recognized under law or otherwise commonly available to CKHA, including, but not limited to: reasonable notice of default or of any legal action/process to be taken against CKHA; reasonable opportunity to cure any alleged default; demand; strict application of any applicable statute of limitations without any limiting modification; set-off; counterclaim; contribution; recoupment; indemnity; any and all legal notice and due process required by law or commonly practiced; trial by jury; and assertion of any claim or defense, including immunity pursuant to W.Va. Code §29-12A-1 *et seq.* or common law, available to CKHA under applicable law.

22. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.

23. **CONFIDENTIAL INFORMATION** - Contractor acknowledges that CKHA is a public entity and is subject to mandatory disclosure of certain information upon request under W.Va. Code § 29B-1-1 *et seq.* (the “Freedom of Information Act”) and W.Va. Code § 6-9A-1 *et seq.* (the “Open Governmental Proceedings Act”). If CKHA is requested or required to disclose any information received by CKHA related to the Agreement which is considered confidential by Contractor, CKHA will promptly notify Contractor of each such request or requirement so that Contractor may seek an appropriate protective order or other appropriate relief. To the extent permitted by Federal, State and local laws, CKHA agrees to cooperate fully with Contractor in seeking any protective order or other remedy. If, in the absence of a protective order or the receipt of a waiver hereunder, CKHA is, nonetheless, compelled to disclose confidential information, it may disclose such information pursuant to such request or requirement without liability hereunder.

24. **WARRANTIES** - Any provision purportedly waiving or excluding Contractor’s warranty of merchantability is hereby deleted. CKHA reasonably relies on Contractor to provide goods and services that are fit for the ordinary purpose for which they are intended, that are consistent with Contractor’s representations, and that meet the reasonable expectations of an ordinary purchaser of those same goods or services. Additionally, and to the extent the Agreement is for goods and/or services that are being customized for CKHA at CKHA’s request, and provided CKHA is paying for that customization, then any provision purportedly waiving or excluding Contractor’s warranty of fitness for a particular purpose is also deleted.

25. **AMENDMENTS** - All amendments, modifications, alterations or changes to the Agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this Addendum without the authorized and express written approval of the Chief Executive Officer of CKHA or his lawful designee.

26. **NO LIABILITY OF INDIVIDUALS** - The Agreement shall not be construed to extend any personal liability to individuals executing or administering the Agreement on behalf of CKHA or Contractor. Additionally, Contractor and CKHA agree, in good faith and to the extent reasonable under the particular circumstances of any dispute, that neither Party will individually name any official, employee, officer, director, or trustee of

either party, in any action, proceeding, claim, or counterclaim relating to the Agreement unless necessary or appropriate as a result of the circumstances or as may be required by law. Notwithstanding, this provision shall not be construed to prevent Contractor or CKHA from taking any and all legal action against any individual who commits fraud, or any other criminal or intentional misconduct, related to this Agreement.

27. **COMPLIANCE WITH HUD REGULATIONS** – Contractor acknowledges that CKHA is a public housing authority funded by HUD and, as such, is required to comply with any and all applicable HUD regulations pertaining to third-party contracts for services and materials, including, but not limited to, the regulations contained in 24 CFR 85.36 and the contract provisions set forth in 24 CFR 85.36(i), which are incorporated by reference as if fully restated herein. Contractor acknowledges and agrees that Contractor has reviewed, understands, and agrees to these additional terms, conditions, and/or requirements. To the extent the Agreement or this Addendum is inconsistent with any HUD regulatory contract term, condition, or requirement, the Parties agree that the HUD regulatory term, condition, or requirement shall control. The Parties agree to cooperate in good faith to comply with all applicable HUD regulations and the requirements imposed by this provision.

*(Remainder of this Page Intentionally Blank; Signatures on Following Page)*

**ACKNOWLEDGED AND AGREED TO BY:**

**Charleston-Kanawha Housing Authority**

**CONTRACTOR**

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

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

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

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

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

