

REQUEST FOR PROPOSALS
FOR
LEGAL SERVICES
Real Estate, Labor / Employment and Litigation Services

Issued by:
The Housing Authority of the City of Denton, Texas
1225 Wilson Street
Denton, TX 76205

January 11, 2023

REQUEST FOR PROPOSALS

The Housing Authority of the City of Denton, Texas (“DHA”) is Requesting Proposals from qualified law firms to provide professional services related to Real Estate, Litigation, and Employment Law.

Proposal submission documents may be obtained from the Administrative Department at DHA’s Administrative Office located at 1225 Wilson Street, Denton, Texas 76205 or by emailing k.english@dentonhousingauthority.com, **beginning January 11, 2023**. Office hours are from 8:30 a.m. to 5:00 p.m. Monday through Friday.

Proposals will be accepted until 3:00 p.m. C.S.T. on, March 1, 2023 at 1225 Wilson Street, Denton, Texas 76205. Any proposals received after 3:00 p.m. C.S.T. on March 1, 2023 will be rejected.

DHA RESERVES THE RIGHT TO REJECT ANY AND ALL PROPOSALS OR TO WAIVE ANY INFORMALITIES IN THE BIDDING. THE HOUSING AUTHORITY OF THE CITY OF DENTON, TEXAS WILL NOT DISCRIMINATE ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, RELIGION, SEX, DISABILITY FAMILIAL STATUS, OR AGE. EQUAL HOUSING OPPORTUNITY.

For other contract opportunities, please visit our website:

www.dentonhousingauthority.com

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- Exhibit A:** a) Instructions to Offerors Non-Construction HUD-5369-B
b) General Conditions for Non-Construction Contracts HUD-5370-C Section I
c) Minority Participation and Section 3 Requirements

Exhibit B: Forms (Completed forms to be submitted with the proposal)

- a) Business References
- b) Non-Collusive Affidavit
- c) Profile of Firm
- d) Minority Business Status
- e) Equal Employment Opportunity

- Exhibit C:** a) Sample Contract For Services
b) Sample Certificate of Insurance

I. INTRODUCTION

The Housing Authority of the City of Denton, Texas (“DHA”) hereby invites qualified and experienced Law firms to submit proposals for **Legal Services to include Real Estate, Labor / Employment, and Litigation Services** as described in the scope of services that follow.

The Housing Authority intends to enter into a 3-year contract with an option to renew the contract for an additional 1 - 2 years.

The Denton Housing Authority is a body, politic and corporate, organized under the laws of the State of Texas and is a political subdivision of the State of Texas. DHA administers a number of federally funded affordable housing programs for low-income families and individuals and owns/operates/manages several affordable developments and commercial space.

II. PROPOSAL SUBMISSION PROCEDURES

Proposals submitted in response to this request shall minimally include a summary of the proposer's qualifications, experience and, if applicable, credentials, licensing, certifications.

Proposals shall be submitted no later than **3:00 p.m. C.S.T., on March 1, 2023.**

Any Proposal received after the specified date and time will not be considered. THERE WILL BE NO EXCEPTIONS. All Proposals must be in the specified office of the DHA on or before the above specified date and time. If you choose to mail your Proposal, it must arrive by the specified date and time, regardless of the postmark date.

A. Submission Package

Offeror must submit one unbound original and 5 bound copies (a total of 6) of the complete submission package. RFP package must be received by the Denton Housing Authority no later than **3:00 p.m. on March 1, 2023** at the following location:

Denton Housing Authority
Attention: Kristin English
1225 Wilson Street
Denton, Texas 76205

B. Request for Information

Proposers desiring any explanation or further information regarding the solicitation must submit an email request no later than **3:00 P.M. on January 31, 2023.** The request must be submitted to **Kristin English** at the following e-mail address: **k.english@dentonhousingauthority.com**. Any clarification and or information will be furnished as a written addendum to the RFP by **February 14, 2023.**

C. Evaluation Process

A selection committee composed of DHA staff will review proposals in accordance with this RFP. The selection committee may at its discretion request oral interviews with proposers to discuss specific aspects of their proposal.

D. Anticipated Schedule of Events

The anticipated schedule for the RFP and contract approval is as follows:

Event	Date
RFP available for distribution	January 11, 2023
Deadline for receipt of written questions	January 31, 2023
Response to written questions	February 14, 2023
Proposal Due Date	March 1, 2023
Estimated Contract Award Date	March 22, 2023

The Denton Housing Authority reserves the right at its sole discretion to amend any or all of the dates associated with the anticipated schedule of events.

III. SCOPE OF SERVICES

The Housing Authority of the City of Denton, Texas ("DHA") is seeking the services of one or more law firms, or sole practitioners to provide a variety of legal services including, but not limited to, Real Estate matters, Labor/Employment matters and Litigation services.

The respondent(s) may provide a proposal covering all areas of services or any combination of service areas. The proposal(s) must clearly indicate what areas of law the proposal addresses and any services which should not be considered. Each response must indicate the responder's familiarity with the Texas Local Government Code, the Texas Open Meeting Act, the Texas Public Information Act, the Private Act of 1974, the Fair Housing Act, Texas Rules of Civil Procedure, Federal Rules of Civil Procedure, and the Texas Property Code.

DHA reserves the right to issue contracts to more than one qualified firm or individual responding to this Request for Proposals. DHA may issue separate contracts for each of the service areas or may issue one contract for all services. The scope of services will include, but not limited to, the following:

REAL ESTATE

1. Property acquisition.
2. Development.

3. Tax Credits (low income and new market).
4. Bond financing.
5. Eminent domain issues.
6. Environmental issues
7. Disposition/sale of real property.
8. Demolition regulations.
9. Relocation of tenants/residents.
10. Review of title issues and real property encumbrances.
11. Secured transactions and familiarity with Texas Business and Commerce Code and the Uniform Commercial Code.
12. Review applicable construction contracts and related payment and performance bonds.
13. Assist and advise DHA's Board of Commissioners, CEO and DHA staff concerning contracts, contract provisions and negotiations of such contracts and other related documents.
14. Provide monthly reports to the CEO concerning the status of litigation matters and non-litigation matters and issues of special concern.
15. Represent DHA in appearances before the governing and administrative bodies of the City, County, Federal Government and other public bodies as required.
16. Represent DHA in negotiations, arbitration, mediation, court and administrative proceedings and actions on other such matters as required.
17. Other legal services as required and/or directed by DHA.

EMPLOYMENT

1. Represent DHA in all aspects of federal and state labor and employment matters, including pay, benefits, FMLA, employment discrimination and workplace harassment.
2. Assist, advise and act as representative of DHA for negotiations, mediation, arbitration, and any and all matters concerning labor/employment matters.
3. Assist and advise DHA's Board of Commissioners, CEO and DHA staff concerning contracts, contract clauses and negotiations of contracts and other documents.
4. Represent DHA in appearances before the governing and administrative bodies of the City, County, Federal Government and other public bodies as required.
5. Represent DHA in negotiations, arbitration, mediation, court and administrative proceedings and actions on other such matters as required.
6. Other legal services as required and/or directed by DHA.

LITIGATION

1. Represent DHA in any legal matters including advisement on leases, tenant/landlord disputes, evictions.
2. Preparation of legal documents necessary to file in state or federal court.
3. File lawsuits on behalf of DHA and serve as counsel on any matters pertaining to the case.

4. Represent DHA in court on lawsuits filed against it by contractors, residents, landlords and others.
5. Assist, advise and represent DHA as needed regarding procurement, contract and construction litigation matters.
6. Provide written legal opinions and attend meetings as necessary for the resolution of disputes between the Housing Authority and contractors and/or vendors.
7. Provide all necessary legal services as may be required for the acquisition of or disposition of property to certify conformance with local, state and federal regulations.
8. Represent DHA in informal hearings involving tenants/residents or in a federal or state court of law as may be determined by the circumstances.
9. Represent DHA in personnel matters including formulating procedures for employment and retention of employees and any subsequent actions.
10. Assist and advise DHA's Board of Commissioners, CEO and DHA staff concerning development of policy and determination of applicable federal, state and local directives, statutes, regulations and laws.
11. Assist and advise DHA's Board of Commissioners, CEO and DHA staff concerning contracts, contract clauses and negotiations of contracts and other documents having a litigation or adversarial impact.
12. Provide monthly reports to the CEO concerning the status of litigation matters and non-litigation matters and issues of special concern.
13. Represent DHA in appearances before the governing and administrative bodies of the City, County, Federal Government and other public bodies as required.
14. Represent DHA in negotiations, arbitration, mediation, court and administrative proceedings and actions on other such matters as required.
15. Other legal services as required and/or directed by DHA.

IV. EVALUATION / SELECTION CRITERIA

Proposals will be evaluated using the following criteria:

1. Experience - Specifically list your organization's and staff's previous experience representing public housing and governmental and/or non-profit entities in matters detailed in the RFP. **(25 points maximum)**
2. Company profile/Staffing - Qualifications and relevant experience of the staff members (number of professionals, support staff, etc.). **(20 points maximum)**
3. Technical or Work Plan - Describe your firm's technical plan for accomplishing all elements of the scope of work. Discuss your approach for matters that may be assigned and detail specifically how resolution of such matters would be achieved. **(20 points maximum)**

4. Compensation - Hourly rate for all personnel that will provide services. Also provide two methods of determining fees for services rendered: a) based on hourly rates and b) flat rates for projects or services or blended rate per service. **(20 points maximum)**
5. Clarity and Responsiveness. **(10 points maximum)**
6. The relative number of female, minority and disabled persons who are employed by the Proposer and/or evidence of Proposer's commitment to Affirmative Action. **(5 points maximum)**

Review: The Authority will make its selection based on the demonstrated competence, expertise, knowledge and qualifications of the firm(s), and on the reasonableness of the proposed fee for the services to be performed. Below is a point allocation of the rating criteria:

Criteria	Score	Point Allocation
Experience		25 pts
Company Profile / Staffing		20 pts
Technical / Work Plan		20 pts
Compensation		20 pts
Clarity of Responsiveness		10 pts
W/MBE Status		5 pts
Total		100 pts

V. GENERAL CONDITIONS OF THE RFP

A. General Conditions

1. DHA reserves the right to accept or reject any and all Proposals submitted, either in whole or in part, with or without cause; to waive any informalities of any Proposal; to cancel this RFP; and, to make the award in the interest of DHA.
2. DHA reserves the right to request additional information, if needed, from prospective contractors.
3. In the event that it becomes necessary for DHA to revise any part of this RFP, revisions will be provided to all prospective contractors who picked up or were delivered the initial RFP, if they provided DHA a name, address, telephone number, fax number, and e-mail address on the pickup log.
4. All Proposals submitted in response to this RFP will be considered public information and may be made available to the general public (including

- news media) unless confidential and /or proprietary information is submitted under separate cover and is clearly designated as such.
5. The Proposer shall provide a presentation if requested to do so by DHA.
 6. The Proposer affirms that he/she is of lawful age and that no other person, firm, partnership, or corporation has any interest in this submittal or in the contract proposed to be entered into.
 7. The Proposer affirms that its Proposal is made without any understanding, agreement or connection with any other person, firm, partnership, or corporation making a submittal for the same purpose, and is in all respects fair and without collusion or fraud.
 8. The DHA may award one or more contracts for services under this RFP.
 9. The Proposer has carefully read the provisions, terms, and conditions of the proposal document and does hereby agree to be bound thereby.
 10. DHA retains the right to negotiate with the selected firm.
 11. Additional services and/or service adjustments may be added or deleted during the life of any contract awarded hereunder as mutually agreed upon in writing between DHA and proposer.
 12. The Proposer must meet DHA's insurance and indemnification requirements set forth herein in the attached sample contract.

B. Acceptance of RFP and Contract Terms

Proposer's submission of a proposal in response to the RFP shall constitute acceptance by the Proposer of the terms and conditions of this RFP. In the event that the Proposer's proposal is accepted for contract award, the Proposer agrees to enter into a contract with DHA in a form substantially similar to the contract form appended hereto as Exhibit C.

C. Contract Award

Subject to the rights reserved in this RFP, DHA will award the contract by written notice to the selected Proposer (the "Contractor"). The award of the contract is subject to the approval of DHA Contract Administrator and it shall be conditioned on the successful negotiation of revisions, if any, to the proposal, recommended as part of the evaluation of proposals.

D. No Warranty

Proposers are required to examine the RFP, scope of services, and instructions pertaining to the services requested. Failure to do so will be at the Proposer's own risk. It is assumed that the Proposer has made full investigation as to be fully informed as to the extent and character of the services requested. No warranty or representation is made or implied as to the information contained in this RFP.

E. Expense of RFP Submission

All expenses incurred in the preparation and submission of the proposals to DHA in response to this RFP shall be borne by the Proposer.

EXHIBIT A

**a) INSTRUCTIONS TO OFFERORS NON-CONSTRUCTION
HUD-5369-B**

**b) GENERAL CONDITIONS FOR NON-CONSTRUCTION
CONTRACTS HUD-5370-C Section I**

**c) MINORITY PARTICIPATION AND SECTION 3
REQUIREMENTS**

Instructions to Offerors Non-Construction
US. 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 offerors 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 agents 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 telegraph 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 HAJHUD 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 HAMUD.

(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 HAI HUD that the late receipt was due solely to mishandling by the HAIHUD 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.

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(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 on 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 bulls-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 bulls-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 an offeror or its authorized representative if the entity 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.

(a) 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

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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. 01/31/2014)
HUD-5370-C Section I

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

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

- 1) Non-construction contracts (without maintenance) greater than \$100,000 - use Section I;
- 2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 968.105) greater than \$2,000 but not more than \$100,000 - use Section II; and
- 3) Maintenance contracts (including nonroutine maintenance), greater than \$100,000 – use Sections I and II.

Section I - Clauses for All Non-Construction Contracts greater than \$100,000

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. 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 III, Labor Standards Provisions, including any claims for damages for the alleged breach there of which are not disposed of by agreement, shall be resolved under this clause.

(b) All claims by the Contractor shall be made in writing and submitted to the HA. A claim by the HA against the Contractor shall be subject to a written decision by the HA.

(c) The HA shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HA's decision, shall notify the HA in writing that it takes exception to such decision, the decision shall be final and conclusive.

(d) Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit

against the HA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HA that it submit a final voucher and release, whichever is earlier, then the HA's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.

(e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the HA.

8. Contract Termination; Debarment

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

(ii) The Contractor's objectivity in performing the contract work may be impaired.

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

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

(d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

12. Inspection and Acceptance

(a) The HA has the right to review, require correction, if necessary, and accept the work products produced by the Contractor. Such review(s) shall be carried out within 30 days so as to not impede the work of the Contractor. Any product of work shall be deemed accepted as submitted if the HA does not issue written comments and/or required corrections within 30 days from the date of receipt of such product from the Contractor.

(b) The Contractor shall make any required corrections promptly at no additional charge and return a revised copy of the product to the HA within 7 days of notification or a later date if extended by the HA.

(c) Failure by the Contractor to proceed with reasonable promptness to make necessary corrections shall be a default. If the Contractor's submission of corrected work remains unacceptable, the HA may terminate this contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

13. Interest of Members of Congress

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

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

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

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

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

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

- (i) The awarding of any Federal contract;
- (ii) The making of any Federal grant;
- (iii) The making of any Federal loan;

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

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

(ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

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

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

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

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

(iii) Selling activities by independent sales representatives.

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

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

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

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

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

(f) Cost Allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal

Acquisition Regulation (FAR), or OMB Circulars dealing with cost allowability for recipients of assistance agreements. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of FAR Part 31 or the relevant OMB Circulars.

16. Equal Employment Opportunity

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

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

Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

17. Dissemination or Disclosure of Information

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

18. Contractor's Status

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

19. Other Contractors

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

20. Liens

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

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

(a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the

notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

(e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

(f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

22. Procurement of Recovered Materials

(a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

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

MINORITY BUSINESS ENTERPRISE PARTICIPATION

Under guidelines established by the U. S. Department of Housing and Urban Development for implementation of Executive Order 12432, the Denton Housing Authority promotes the participation of Minority and Women-Owned Business Enterprises (M/WBEs) in contracts involving its housing programs. It is the goal of the Denton Housing Authority that twenty-five percent (25%) of the dollar value of contracts and subcontracts let in connection with its programs is awarded to M/WBEs.

The term "Minority and Women-Owned Business Enterprises" means businesses at least fifty-one percent (51%) of which are both owned and controlled in management and daily operations by minorities or women. The term "Minorities" includes Blacks, Hispanics, Asian or Pacific Islanders, American Indians and Alaska Natives.

NOTICE

The Denton Housing Authority (DHA) notifies all bidders that in regard to any contract entered into, Minority and Women-Owned Business Enterprises (M/WBEs) will be afforded equal opportunity to submit bids and will not be discriminated against on the grounds of race, color, sex, or national origin in consideration for an award.

Bidders of contracts of \$25,000 or more shall agree to meet established DHA M/WBE goals or shall demonstrate and document a Good Faith Effort to include Minority or Women-Owned Business firms in subcontract awards. These firms shall submit with their bids the attached Letter of Assurance "A" and Schedule of Subcontractors/Suppliers Bid Solicitation. (Construction Bids only)

Contractors who propose to perform the entire contract with their own work forces, without the use of subcontractors, are required to submit with their bid documentation of their intent to make material purchases of goods, equipment and other services from M/WBEs, or document its good faith effort to do so. These firms shall submit with their bid the attached Letter of Assurance "B" and Schedule of Suppliers. These firms utilizing their own forces must also submit information sufficient for DHA to determine their demonstrated capabilities and that it is a normal business practice to perform the contract without the use of subcontractors. (Construction Bids only)

Good Faith Effort shall be defined and demonstrated by a contractor's effort to solicit M/WBEs to bid on subcontracts and/or their effort to purchase goods and supplies from M/WBE firms.

A BIDDER WHO FAILS TO ADEQUATELY DOCUMENT A GOOD FAITH EFFORT TO SUBCONTRACT WITH M/WBE FIRMS OR TO PURCHASE SIGNIFICANT MATERIAL SUPPLIES FROM M/WBEs MAY BE DENIED AWARD OF THE CONTRACT BY DHA BASED ON THE CONTRACTOR'S FAILURE TO BE A "RESPONSIBLE BIDDER" AND A "RESPONSIVE BIDDER." THE ATTACHED FORM LETTER OF ASSURANCE "B" AND SCHEDULE OF SUPPLIERS) MUST BE COMPLETED BY ALL BIDDERS AND SUBMITTED WITH THEIR BIDS IN ORDER FOR THEIR BIDS TO BE CONSIDERED.

Information obtained will be retained by DHA as permanent records of the prime contractor's "Good Faith Effort."

"THE SECTION 3 CLAUSE"

- A. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and 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 requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the area of the Section 3 covered project, and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the section 3 covered project.
- B. The parties to this contract will comply with the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary to Housing and Urban Development set forth in 24 Part CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability, which would prevent them from complying with these requirements.
- C. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- D. The contractor will include this section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal Financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- E. Compliance with the provisions of section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

SECTION 3 DEFINITIONS

1. Section 3 Business firm:
 - a. Is any business located within the Section 3 area and any business owned in substantial part, at least 51 percent, by persons residing in the Section 3 area? This includes residents of the housing development and any other residents of the Section 3 area.
 - b. Must qualify as small under the Small Business Administration definition.
2. Section 3 area:
 - a. For purpose of job training and employment, the Section 3 area is the same unit of local government or metropolitan area or nonmetropolitan county as determined by HUD in which the Housing Authority's development is located.
 - b. For contracting, it is the same metropolitan or nonmetropolitan county where the Housing Authority's development is located.
3. Same unit of local government is the city/town where the Housing Authority is located if not within the Metropolitan Statistical Area (MSA).
4. Metropolitan Area: The office of Management defines metro areas for use in Federal statistical activities based upon the minimum population of 50,000 or a Census Bureau defined urbanized area with a total population of at least 100,000. The metro area must consist of one or more counties. Examples in Texas include (Lubbock County) and Longview-Marshall (Gregg, Harrison and Upshur Counties).
5. Nonmetropolitan County is defined as a county located outside of the Metropolitan Area such as Palo Pinto County, Texas.

CHAPTER 4. WHAT SECTION 3 REQUIRES OF RECIPIENTS AND CONTRACTORS

Section 3 requires that, to the greatest extent feasible, opportunities for job training and employment be given to lower income residents of the Section 3 area and contracts for work in connection with the Section 3 covered project be awarded to business concerns which are located in or owned in substantial part by persons residing in the Section 3 area. Section 3 requires that a recipient/contractor take affirmative steps to give preference to qualified Section 3 area residents and business concerns in providing training, employment and contracting in connection with Section 3 covered projects. This chapter describes the obligations of recipients and contractors, imposed as a condition of receiving financial assistance for a Section 3 covered project. The "condition" is imposed by means of a certification or contract document, which includes Section 3 obligations.

4-1. Community Development Block Grant

Section 3 was amended in 1974 to explicitly add Community Development Block Grants (CDBG) to Section 3's coverage of HUD programs providing direct financial assistance in aid of housing, urban planning, and various types of development. The HUD regulations governing the CDBG Program deal specifically with Section 3 at 24 CFR 507.607. That provision of the regulations points out that Section 3 itself applies to the CDBG Program and requires grantees to adopt appropriate procedures and requirements to "assure good faith efforts toward compliance with the statutory

directive."Notwithstanding the applicability of the statute, this regulation further provides that the HUD Section 3 regulations, at 24 CFR Part 135, "are not applicable to" CDBG activities assisted under 24 CFR Part 570. The Part 135 regulations, while not binding on CDBG grantees, "may be referred to as guidance indicative of the Secretary's view of the statutory objectives in other contexts."

4-2. OTHER HUD PROGRAMS

A. Assurance of Compliance with Section 3. Every agreement for direct financial assistance must include the requirement that the applicant or recipient carry out the provisions of Section 3 and the governing regulations at 24 CFR (Section 135.20(a)). In addition, applications and recipients are required to cooperate with HUD in obtaining the compliance of their contractors and subcontractors with the regulations governing Section 3, including cooperation in distributing and collecting information (see 135.30).

B. Incorporation of Section 3 Clause. Section 135.20(b) requires that every covered party incorporate a "Section 3 clause" in all contracts for work on a Section 3 covered project (see Appendix E). Note that the General Conditions of the Contract for Construction of Public and Indian Housing Programs (Form HUD-5370) contain the Section 3 clause. A Section 3 clause includes statements to the effect that:

1. the work under the contract is covered by Section 3 and a brief description of Section 3;
2. the parties have agreed to comply with Section 3 and Part 135 and are not contractually or otherwise prevented from complying;
3. contractors will notify labor organizations of their commitments under Section 3;
4. contractors agree to include a Section 3 statement in every subcontractors and will not let contracts without obtaining assurances of compliance from subcontractors;
5. the parties agree not to subcontract with any subcontractor found in violation and unable or unwilling to comply with Part 135; and
6. the parties acknowledge compliance, which is binding upon the applicant or recipient, its successors, and assignees.

C. A good faith effort to utilize Section 3 area residents as trainees and employees. To the greatest extent feasible, opportunities for training and employment arising in connection with a Section 3 covered project are to be given to Section 3 area residents.

1. Although Section 3 does not require that a training program be established, it does require that, where there is a training program, Section 3 area residents receive preference for such training. An applicant, recipient, contractor or subcontractor is obligated, under Part 135 Subpart B, to use the maximum number of persons in training categories and to fill all vacant training positions with Section 3 area residents except for those training positions which remain unfilled after a good faith effort has been made to fill them with eligible/qualified Section 3 area residents.

2. Obligations for utilizing Section 3 area residents as employees are set forth at Part 135 Subpart C. In general, an applicant, recipient, contractor or subcontractor must:
 - a. identify the number of positions, by skill level, required to plan and implement the work to be done under the Section 3 covered project;
 - b. determine how many of these positions are currently filled and which are not filled by regular, permanent employees; and
 - c. establish a target within each occupational category for the number of positions to be filled by Section 3 area residents.

3. Examples of actions demonstrating a good faith effort include:
 - a. targeted recruitment of Section 3 area residents for training and employment positions by taking such steps as:
 - = advertising in local media,
 - = prominently placing a notice of commitments under Section 3 at the project site or other places where applications for training and employment are taken,
 - = contacting local job training centers, employment service agencies and community organizations,
 - = developing on-the-job training opportunities or participating in job training programs,
 - = contacting assisted housing resident councils and resident management corporations;
 - b. keeping a list of Section 3 area residents who apply on their own or by referral for available positions;
 - c. sending to labor organizations or representative of workers with whom the recipient, contractor or subcontractor has a collective bargaining agreement or other understanding, a notice about contractual commitments under Section 3; and
 - d. selection of Section 3 area residents for training and employment position.

- D. A good faith effort to award contracts for work in connection with the project to Section 3 business concerns. Recipients and contractors must fulfill their obligations to utilize Section 3 business concerns by developing and implementing an affirmative action plan (see 135.70).
 1. An affirmative action plan (AAP) includes:
 - a. an approximate number and dollar value of contracts to be awarded over the duration of the Section 3 covered project (this estimate should be broken down by type of business or profession);
 - b. based on an analysis of the estimated contract needs, a target number and value of contracts to be awarded to Section 3 business concerns (these targets should consider the availability of Section 3 business concerns within the categories identified in the initial estimate of contract needs); and
 - c. a program or strategy for achieving the targets established for awards to Section 3 business concerns.

2. The strategy for implementing the affirmative action plan must include, but need not be limited to, insertion of the affirmative action plan and identification of the Section 3 area in bid documents.
3. Further actions that must be taken in implementing the AAP are:
 - a. steps to secure the cooperation of contractors in meeting the goals for contract awards to Section 3 business concerns;
 - b. steps to ensure that Section 3 business concerns are notified of pending contractual opportunities, e.g. publishing future contract opportunities through local business development centers, local business and contractors' associations, local media, and assisted housing resident management corporations; and
 - c. requiring submission of an AAP as described in subparagraph 1a. above by all bidders responding to a competitive solicitation and evaluating each bid to determine whether the proposed AAP will accomplish the stated goals.

E. Recipient Records and Reports

1. Section 135.120 of the regulations implementing Section 3 requires recipients and contractors to keep records and to submit reports which would allow the Department to ascertain compliance with Section 3 regulations. Recipients and contractors must advise HUD within 15 days of contract award, of the steps taken or to be taken to comply with Section 3. There is currently no prescribed format for keeping or reporting Section 3 data. Appendix F is a sample format that may be used for keeping Section 3 related records.
2. Records and reports include actions taken and their results. Examples of records to be maintained are:
 - copies of advertisements for training and employment;
 - lists of Section 3 residents who applied or otherwise expressed an interest in training positions or employment.
 - copies of solicitations or requests for Bids;
 - documentation of pre-construction conferences;
 - records of bid evaluations and selections;
 - correspondence or other documentation related to Section 3 grievances;
 - photographic evidence of displayed signs;
 - copies of letters to community organizations;
 - copies of notifications of awards to grantees and contractors;
 - copies of business AAPs, including records of solicitation mailing lists, direct solicitation of bids or Bids; and
 - evidence of affirmative steps to include Section 3 business concerns; such as, dividing total work requirements into smaller sub-tasks, joint ventures between a large business and Section 3 business concern, and limiting competition to Section 3 business concerns pursuant to HUD regulations at 24 CFR Part 963.
3. Certain HUD reports contain data that may be used in monitoring performance under Section 3. These reports include, but may not be limited to:

- Form HUD 40013A - the CDBG Finding Summary Sheet records findings resulting from in-house or on-site monitoring.
- Form HUD 40013 - the CDBG Annual Performance Summary includes information gathered both in-house and on-site throughout the year. Funding recommendations and decisions regarding the grant for the next year are based on these determinations.
- Form (WH-347) - the Contractor's Payroll Certification Form used by contractors to report employment data on construction projects (see Appendix G). Labor Relations staff collects this for Section 202 projects and certain other housing programs. This staff can assist FHEO staff in obtaining access to payroll records maintained by public housing agencies, community development block grant recipients and other recipients of direct HUD financial assistance covered by Section 3.

EXHIBIT B

FORMS

- a) BUSINESS REFERENCES**
- b) NON-COLLUSIVE AFFIDAVIT**
- c) PROFILE OF FIRM**
- d) MINORITY BUSINESS STATUS**
- e) EQUAL EMPLOYMENT OPPORTUNITY**

BUSINESS REFERENCES

Please Provide A Minimum Of Five (5) Business References:

(1) **Company Name:** _____

Address: _____

City, State, and Zip: _____

Contact Person: _____

Phone Number: _____

(2) **Company Name:** _____

Address: _____

City, State, Zip: _____

Contact Person: _____

Phone Number: _____

(3) **Company Name:** _____

Address: _____

City, State, Zip: _____

Contact Person: _____

Phone Number: _____

(4) **Company Name:** _____

Address: _____

City, State, Zip: _____

Contact Person: _____

Phone Number: _____

(5) **Company Name:** _____

Address: _____

City, State, and Zip: _____

Contact Person: _____

Phone Number: _____

AFFIDAVIT
(Prime Bidder)

STATE OF TEXAS}
COUNTY OF DENTON}

_____, being first duly sworn, deposes and says:

That he/she is _____
(a partner or officer of the firm, corp., of, etc)

The party making the foregoing proposal or bid and attests to the following:

- (1) that affiant employed no person, corporation, firm, association, or other organization, either directly or indirectly, to secure the public contract under which he received payment, other than persons regularly employed by the affiant whose services in connection with the construction of the public building or project or in securing the public contract were in the regular course of their duties for affiant; and
- (2) that no part of the contract price received by affiant was paid or will be paid to any person, corporation, firm, association, or other organization for soliciting the contract, other than the payment of their normal compensation to persons regularly employed by the affiant whose services in connection with the construction of the public building or project were in the regular course of their duties for affiant.
- (3) that such proposal or bid is genuine and not collusive or sham; that said bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham bid or to refrain from bidding and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid price or affiant or of any other bidder, or to fix any overhead, profit or cost element of said bid price, or of that of any other bidder, or to secure any advantage against The Housing Authority of the City of Denton, Texas, or any person interested in the proposed contract; and that all statements in said proposal or bid are true.

(Signature *)

*(Bidder if the bidder is an individual; all partners if the bidder is a partnership; Officer if the bidder is a corporation)

Subscribed and sworn to me this _____ day of _____.

Seal/Stamp

(Notary Public's Signature)

My Commission expires: _____

PROFILE OF FIRM FORM

- (1) Name of Firm: _____
- (2) Contact Person: _____
- (3) Address: _____
- (4) City, State, Zip: _____
- (5) Telephone: _____
- (6) Fax: _____ Email: _____
- (7) Please include the following information:
- a. Tax ID Number; _____
 - b. Year firm established; _____
 - c. Year firm established in Denton/Fort Worth; _____
 - d. Former name of firm and year established (if applicable); _____

 - e. Name of parent company and date of acquisition (if applicable); _____

- (8) Identify Principals/Partners in firm:

NAME	TITLE	% Of OWNERSHIP

- (9) Identify the individuals that will act as project manager and any other supervisory personnel that will work on project:

NAME	TITLE

- (10) **Debarred Statement:** *Has this firm, or any of its principal(s), ever been debarred from providing any services to the Federal Government (including, but not limited to HUD), any state government, the State of Texas, or any local government agency within or without the State of Texas? Yes _____ No _____*
- (If yes, please attach a full detailed explanation, including dates, circumstances and current status.)*

Signature

Printed Name

Company

Date

MINORITY BUSINESS STATUS

MINORITY BUSINESS ENTERPRISES (MBE), WOMAN-OWNED BUSINESS ENTERPRISES (WBE), HISTORICALLY UNDERUTILIZED BUSINESS (HUB), AND/OR SECTION 3 BUSINESS CONCERN STATUS

It is the intent of the Housing Authority of the City of Denton, Texas (DHA) to assure that Minority Business Enterprises (MBE), Women-Owned Business Enterprises, Historically Underutilized Businesses (HUBs) and Section 3 Business Concerns have an equal opportunity to participate in DHA's purchasing and contracting activities.

- A. The offeror has represented as part of its offer that it *is* *is not* **a Minority-Owned Business**, which is defined as a business which is at least 51 percent owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans and Asian Indian Americans, and Hasidic Jewish Americans.

Please indicate which minority group you qualify under: **Black or African American**; **Hispanic American**; **Asian Pacific American**; **Hasidic Jewish American**; **Asian Indian American**; **Native American**; or, **other (specify)** _____.

- B. The offeror has represented as part of its offer that it *is* *is not* **a Woman-Owned Business/Enterprise (WBE)**, which is defined as a business which is at least 51 percent owned by one or more women; or, in the case of a publicly owned business, one in which at least 51 percent of its voting stock is owned by one or more women, and whose management and daily business operations are controlled by one or more such individuals.

- C. The offeror has represented as part of its offer that it *is* *is not* **an Historically Underutilized Business (HUB)** as defined in Vernon's Texas Codes Annotated, Government Code, §2161.001 as an entity with its principal place of business in this state (Texas) that is: (a) a corporation formed for the purpose of making a profit in which 51% or more of all classes of the shares of stock or other equitable securities are owned by one or more economically disadvantaged persons who have a proportionate interest and actively participate in the corporation's control, operation, and management; (b) a sole proprietorship created for the purpose of making a profit that is completely owned, operated, and controlled by an economically disadvantaged person; (c) a partnership formed for the purpose of making a profit in which 51% or more of the assets and interest in the partnership are owned by one or more economically disadvantaged persons who have a proportionate interest and actively participate in the corporation's control, operation, and management; (d) a joint venture in which each entity in the venture is a Historically Underutilized Business, as determined under another paragraph of this subdivision; or, (e) a supplier contract between a Historically Underutilized Business as determined under another paragraph of this subdivision and a prime contractor under which the Historically Underutilized Business is directly involved in the manufacture or distribution of the goods or otherwise warehouses and ships the goods.

- D. The offeror has represented as part of its offer that it *is* *is not* **a Section 3 Business Concern** is defined in 24 CFR, Section 135 as a business (a) that is 51 percent or more owned by section 3 residents; or (b) whose permanent, full-time employees include persons, at least 30 percent of whom are currently section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents; or (c) that provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (a) or (b) in this definition of "section 3 business concern."

If you have been certified by the North Central Texas Regional Certification Center (minority- or women-owned business certification only), DFW Minority Business Development Council (minority- or women-owned business certification only), the Texas Building and Procurement Commission (minority- and women-owned business and HUB certification only) and/or the Housing Authority of the City of Denton, Texas (Section 3 business certification only) please attach a copy of the Certification(s).

SIGNATURE

PRINT OR TYPE NAME

COMPANY NAME (Offeror)

DATE

EQUAL EMPLOYMENT OPPORTUNITY - EMPLOYER INFORMATION REPORT

Name of Firm: _____

Address: _____

City, State, ZIP: _____

Telephone: _____

JOB CATEGORIES	OVERALL TOTALS	MALE					FEMALE				
		WHITE (Not of Hispanic Origin)	BLACK (Not of Hispanic Origin)	HISPANIC	ASIAN OR PACIFIC ISLANDER	AMERICAN INDIAN OR ALASKAN NATIVE	WHITE (Not of Hispanic Origin)	BLACK (Not of Hispanic Origin)	HISPANIC	ASIAN OR PACIFIC ISLANDER	AMERICAN INDIAN OR ALASKAN NATIVE
Officials and Managers											
Professionals											
Attorneys											
Associate Attorneys											
Office and Clerical											
TOTAL											

Signature: _____

Date: _____

EXHIBIT C

- a) SAMPLE CONTRACT FOR SERVICES**
- b) SAMPLE CERTIFICATE OF INSURANCE**

SAMPLE CONTRACT

DHA CONTRACT FOR SERVICES

Rev. 09-19-22

In consideration of the mutual promises and covenants herein contained, **INSERT NAME AND ADDRESS OF CONTRACTOR**, (hereinafter referred to as the "Contractor") and The Housing Authority of the City of Denton, Texas, 1225 Wilson Street, Denton, Texas 76205 (hereinafter referred to as the "DHA") agree as follows:

1. SERVICES

Contractor shall furnish to DHA the services attached hereto as Exhibit A and made a part hereof for all purposes (hereinafter referred to collectively as the "Services"). Additional services and/or service adjustments may be added or deleted during the life of this Contract as mutually agreed upon in writing between DHA and Contractor. If it becomes necessary to revise the specifications after this Contract is executed, a written "Change Order" or a "Modification to the Contract" shall be executed by the parties and become part of this Contract. The Contractor shall perform the Services as expeditiously as is consistent with the requirements of DHA; it is understood that time is of the essence for performance of the Services.

2. CHARGES

In consideration for the Services provided pursuant to this Contract, DHA agrees to pay Contractor an amount not to exceed **INSERT AMOUNT OF CONTRACT LIMIT** per year, in accordance with the Proposal attached hereto as Exhibit B and made a part hereof for all purposes. In no event shall DHA pay for goods or services not actually delivered.

DHA shall pay the approved amounts of Contractor's invoices within forty-five (45) days after receipt of invoice in proper form. Payment will be contingent upon DHA's review of the invoice and determination that the Services described in the invoice are within the description of the Services under this Contract. If DHA, in good faith, disputes and does not approve an item billed, DHA will notify the Contractor of the item or portion of an item disputed and will withhold payment thereof until settlement of the dispute. The right of DHA to withhold such payments will be in addition to, and not in any way in lieu of, any other right of DHA hereunder, including the right to raise disputes for the first time after audit. All payments shall be on account only and are subject to adjustment after audit.

3. TERM

Services provided by Contractor hereunder shall commence on **INSERT DATE, MONTH AND YEAR** and shall end on **INSERT DATE, MONTH AND YEAR**, unless terminated earlier as set forth herein. **DHA MAY EXERCISE ITS SOLE OPTION TO EXTEND THIS CONTRACT FOR UP TO TWO ADDITIONAL ONE-YEAR TERMS.** Contractor acknowledges that DHA is a recipient of Federal Funds and that payments made under this Contract will be made with Federal appropriations. Accordingly, if DHA does not receive its full appropriation, it may terminate this Contract under Section 4, below.

4. TERMINATION

DHA shall have the right to terminate this Contract, with or without cause, by giving written notice by certified mail to the other party at least **THIRTY (30)** days prior to the date the contract is to be terminated.

SAMPLE CONTRACT

5. NO DUTY EXCEPT AS EXPRESSLY STATED

The Contractor shall perform all Services in a careful and workmanlike manner and in accordance with the highest nationally accepted standards of care, skill and diligence applicable to the Services. Otherwise, there shall be no duty owed by either party to this Contract except those that are expressly stated herein.

6. COMPLIANCE WITH LAW

The Contractor shall give all notices and comply with all federal, state, and local laws, ordinances, rules and regulations and the lawful orders of any public authority bearing on the performance of the Services. If the Contractor observes that any provision of the Contract is at variance with any applicable law, statute, building code or regulation, the Contractor shall notify DHA in writing promptly, and the necessary changes shall be accomplished by appropriate written modification of the Contract. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules or regulations, the Contractor shall assume full responsibility and shall bear all cost and liability attributable thereto.

This Contract and the rights and obligations of the parties thereto shall be interpreted, construed and enforced in accordance with the laws of the State of Texas.

By execution of this Contract, the Contractor warrants and covenants to DHA that all Services will be performed in accordance with all applicable federal, state, county and city codes, rules and ordinances, including, but not limited to, the federal Clean Air Act and the Occupational Health and Safety Act, the Texas Industrial Safety and Health Act, and the Workers Right to Know Law.

Furthermore, the Contractor shall obtain and maintain in full force and effect during the term of this Contract, such licensing and/or permits as may be required by federal, state and local authorities.

7. INSURANCE

The following shall apply as indicated:

(a) Contractor shall procure and maintain at its sole cost and expense for the duration of this Contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Contractor, its agents, representatives, volunteers, employees or subcontractors. Contractor acknowledges that it has familiarized itself with the extent and scope of work to be performed and certifies that its insurance policies provide coverage for losses that might arise from the types of hazards to be found therein.

- i. Contractor's insurance coverage shall be primary and noncontributory with respect to DHA, its commissioners, officers, directors, employees and volunteers.

SAMPLE CONTRACT

- ii. To the extent that subcontractors may be used, Contractor shall include all subcontractors as additional insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.
 - iii. Certificates of Insurance and endorsements shall be furnished to DHA and approved by DHA before services are furnished.
 - iv. The following standard insurance policies shall be required:
 - (a) Commercial General Liability Policy
 - (b) Workers' Compensation Policy and Employers Liability Policy
 - (c) Automobile Liability Policy
 - (d) Professional Liability Policy (applies to architects, engineers, brokers, lawyers, doctors, and other professional services)**
 - v. Approval, disapproval or failure to act by DHA regarding any insurance supplied by Contractor shall not relieve Contractor of full responsibility or liability for damages and accident as set forth in the contract documents. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate Contractor from liability.
- (b) The following requirements are applicable to all policies:
- i. Commercial General Liability and Workers Compensation insurance shall be written by a carrier with an A-: VII or better rating in accordance with current A.M. Best Key Rating Guide.
 - ii. Only insurance carriers licensed or duly authorized to do business in the State of Texas will be accepted.
 - iii. Only deductibles applicable to property damage are acceptable; if applicable they must be shown on the certificate of insurance and approved by DHA.
 - iv. Except for Professional Liability insurance, "Claims made" policies will not be accepted.
 - v. DHA, its commissioners, officers, directors, employees, and volunteers, are to be added as "Additional Insured" to the General Liability and the Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to DHA, its commissioners, officers, directors, employees, and volunteers.
 - vi. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, nonrenewed or reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested has been given to DHA.

SAMPLE CONTRACT

- vii. Upon request, certified copies of all insurance policies shall be furnished to DHA.

(c) COMMERCIAL GENERAL LIABILITY INSURANCE

The following Commercial General Liability Insurance is required:

- i. Minimum Limits of \$1,000,000 per Occurrence with an annual Aggregate of \$1,000,000 for Bodily Injury, Personal Injury and Property Damage.
- ii. Coverage shall be provided for premises/operations and product/completed operations hazards.
- iii. The ISO Commercial General Liability Policy form ("Occurrence" form CG 0001, Ed. 11/88) or broader with no deletions of coverage. Any exclusions, changes or limitations of coverage must be submitted with Contractor's written proposal and must be approved by the DHA risk manager.
- iv. A Waiver of Subrogation in favor of DHA must be endorsed to the policy.

(d) WORKERS' COMPENSATION INSURANCE

The following Workers' Compensation is required:

- i. Workers' Compensation to Statutory limits;
- ii. Minimum Employer's Liability limits of:
 - (a) By Accident -- \$500,000 each accident;
 - (b) By Disease -- \$500,000 Policy limit; and,
 - (c) By Disease -- \$500,000 each Employee
- iii. "Texas," must appear in Item 3A of the declarations page or Item 3C must contain the following: "All states except those listed in Item 3A and the state of NV, ND, OH, WA, WV, and WY."
- iv. A Waiver of Subrogation in favor of DHA must be endorsed to the policy.

(e) AUTOMOBILE LIABILITY

The following Automobile Liability Insurance will be required:

- i. On Owned, Non-owned or Hired motor vehicles used on the site or in connection therewith, a minimum Combined Single limit of \$1,000,000. each Accident for Bodily Injury and Property Damage.

SAMPLE CONTRACT

- ii. **DHA, its commissioners, officers, directors, employees and volunteers, shall be added as "Additional Insureds."**
- iii. **Insurance Services Office Business Auto coverage form (CA 0001, Ed. 6/92) or broader with symbol 1, "any auto" shown in the *Covered Autos* portion of the declarations page.**
- iv. **There shall be no special limitations regarding the scope of protection afforded to DHA, its commissioners, officers, directors, employees and volunteers.**
- iv. **A Waiver of Subrogation in favor of DHA must be endorsed in the policy.**

(f) **PROFESSIONAL LIABILITY**

The following Professional Liability Insurance will be required:

- i. **Minimum limits of liability of \$1,000,000.00 each Claim, \$1,000,000.00 Aggregate.**
- ii. **The services, which are to be rendered to the DHA, must be specifically defined in the policy as an insured service.**
- iii. **If the Professional Liability policy is written on a "Claims made" form, the following additional requirements apply:**
 - (a) **A retroactive date must be on or before the execution date of the Contract and the policy must provide an extended reporting period of not less than five years following the completion date of the Contract; or**
 - (b) **The Contractor agrees to keep valid and collectible Professional Liability insurance in full force and effect for a minimum of five years after the completion of this Contract.**

(g) **CERTIFICATES OF INSURANCE**

All Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, and shall contain provisions warranting the following:

- i. **The company is authorized to do business in the State of Texas.**
- ii. **The insurance set forth by the insurance company is written on forms approved by the Texas State Board of Insurance or ISO.**
- iii. **Sets forth all endorsement and insurance coverage according to requirements and instructions contained herein.**

SAMPLE CONTRACT

- iv. Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to DHA.
- v. Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

(h) VERIFICATION OF COVERAGE

The following requirement pertains to all Certificates of Insurance.

Contractor shall furnish DHA with certificates of insurance and with original endorsements effecting coverage by this clause. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf and written on forms that have been approved by the Texas Department of Insurance or Insurance Services Office. They must set forth all coverage and deductibles as well as the notice of cancellation, termination or change in coverage provisions to DHA according to requirements and instructions contained herein Certificates of insurance (or certified copies of policies) and any required endorsements shall be furnished to and approved by DHA before work commences. DHA reserves the right to require complete, certified copies of all required insurance policies at any time

(I) NOTICES

All notices pertaining to insurance shall be given to DHA at the following addresses:

Denton Housing Authority
Director of Finance
1225 Wilson Street
Denton, Texas 76205

8. INDEMNIFICATION

TO THE EXTENT PERMITTED BY LAW, CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD DHA, ITS COMMISSIONERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ATTORNEYS, CONSULTANTS, AND VOLUNTEERS HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES, "DAMAGES" FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, FAILURE TO COMPLY WITH GOVERNMENTAL LAWS OR REGULATIONS, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, OR BY ANY ACT OR OMISSION OF CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS CONTRACT, REGARDLESS OF WHETHER OR NOT IT IS CAUSED IN PART BY THE NEGLIGENCE OR CONDUCT OF DHA OR OTHER PARTY INDEMNIFIED HEREUNDER. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR OTHERWISE REDUCE ANY OTHER RIGHT OR OBLIGATION OF INDEMNITY WHICH WOULD OTHERWISE EXIST AS TO ANY PARTY OR PERSON DESCRIBED IN THIS

SAMPLE CONTRACT

SECTION. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

9. LIMITATION OF AGREEMENT

Contractor and DHA agree and acknowledge that this Contract is entered into by and between Contractor and DHA only, and is not intended to inure to the benefit of any other party. No party other than Contractor and DHA may claim a benefit pursuant to this Contract, and in the event that any third party asserts a claim against DHA as a result of this Contract or as a result of the services provided by Contractor pursuant to this Contract, Contractor agrees to defend, indemnify and hold harmless DHA, its commissioners, officers, directors, employees, agents, attorneys, consultants, and volunteers against any and all liabilities, demands, claims, suits, judgments, or other costs or expenses incident to any and all such claims.

10. ACCESS TO RECORDS

Contractor acknowledges that DHA is a grantee of federal funds and therefore Contractor agrees to provide access by DHA, the United States Department of Housing and Urban Development, the Comptroller General or the United States, or any of their duly authorized representatives to any books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purposes of making audit, examination, excerpts, and transcriptions.

11. RETENTION OF RECORDS

Contractor agrees to retention of all records pertinent to this Contract for three (3) years after DHA makes final payment hereunder and all other pending matters are closed.

12. EQUAL EMPLOYMENT OPPORTUNITY

Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or handicap. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin or handicap. Such action shall include, but not be limited to (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship. Contractor shall include the terms and conditions of this clause in every subcontract unless exempted by the rules, regulations, or order of the Secretary of Labor issued under Executive Order 11246, as amended. Contractor agrees to indemnify, defend and save DHA harmless from all claims, investigations and suits with respect to all alleged or actual violations of state or federal labor laws resulting from any act or acts, or omissions of Contractor.

13. EMPLOYMENT, TRAINING, AND CONTRACTING OPPORTUNITIES FOR LOW-INCOME PERSONS, SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

The Contractor agrees as follows:

SAMPLE CONTRACT

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers representative of the contractors commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the requirements of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractors obligations under 24 CFR part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- (g) Pursuant to 24 CFR 905.170(b), compliance with Section 3 requirements shall be to the maximum extent consistent with, but not in derogation of compliance with section 7(b) of the Indian Self-determination and Education Assistance Act, 25 U.S.C. section 450e(b) when this law is applicable.

SAMPLE CONTRACT

CONTRACTOR UNDERSTANDS AND AGREES THAT FAILURE TO COMPLY WITH DHA'S SECTION 3 REPORTING REQUIREMENTS IS GROUNDS FOR THE TERMINATION OF THIS CONTRACT.

14. INTEREST OF MEMBERS OF CONGRESS

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

15. INTEREST OF MEMBERS, OFFICERS OR EMPLOYEES AND FORMER MEMBERS, OFFICERS OR EMPLOYEES

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

16. LIMITATION ON PAYMENTS MADE TO INFLUENCE CERTAIN FEDERAL FINANCIAL TRANSACTIONS

The Contractor agrees as follows:

(a) Contractor agrees to comply with Section 1352 of Title 31, United States Code which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

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

17. ROYALTIES AND PATENTS

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

SAMPLE CONTRACT

Contractor shall promptly notify DHA's Contracting Officer. Failure to give such notice shall make Contractor responsible for resultant loss.

18. ASSIGNMENT

This Contract is not assignable unless such assignment has been consented to in writing by both parties.

19. INTEGRATION AND SEVERABILITY

This Contract constitutes the entire agreement between Contractor and DHA with respect to the subject matter hereof and supersedes all prior agreements, either written or oral. This Contract cannot be altered, changed or amended except by written instrument signed by both parties. Should any portion of this Contract be deemed unenforceable by a court of competent jurisdiction or by operation of law, the remaining portions hereof shall be unaffected and be interpreted as if such unenforceable portions were initially deleted.

20. STATE LAW AND VENUE

This Contract has been executed and delivered in the State of Texas, and shall be construed in accordance with the laws of such State, without regard to the conflict of law provisions of the State of Texas or any other jurisdiction. Any action brought to enforce or interpret this Contract shall be brought in the court of appropriate jurisdiction in Denton County, Texas.

21. WAIVER

No waiver of any term or condition of this Contract by either party shall be deemed to imply or constitute a further waiver of the same term or condition or of any other term or condition. Any such waiver must be in writing and signed by the party granting such waiver.

22. CONSTRUCTION

Each party agrees that any court interpreting or considering this Contract shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of the rule or conclusion that a document should be construed more strictly against the party who prepared it.

23. PARAGRAPH HEADINGS

The paragraph headings used herein are descriptive only and shall have no legal force and effect whatsoever.

24. ADVICE OF COUNSEL

SAMPLE CONTRACT

Both parties acknowledge that this Contract is a legal document and that they have been advised and given the opportunity to seek the advice of legal counsel of their own choosing as to its contents, obligations and effect.

25. NO AGENCY RELATIONSHIP

Nothing contained in this Contract or in the relationship between DHA and Contractor shall be deemed to constitute such relationship as a partnership or joint venture, or constitute Contractor as an employee or a partner of DHA, or create any other relationship between DHA and Contractor, expressed or implied, it being understood and agreed that Contractor is an independent contractor. In particular, Contractor shall be responsible for all of Contractor's employees and agents, the supervision of all persons performing services for and on behalf of Contractor and for determining the manner and time of performance of all acts to be performed by Contractor under this Contract.

26. INCONSISTENCIES BETWEEN THE CONTRACT DOCUMENTS

To the extent there may be inconsistencies in the terms contained in this Contract, the Services (Exhibit A) and the Proposal (Exhibit B), this Contract shall control over all other documents.

SIGNED this _____ day of _____, 20_____.

THE HOUSING AUTHORITY OF
THE CITY OF DENTON, TEXAS

INSERT NAME OF CONTRACTOR

BY: _____
Sherri McDade
Chief Executive Officer

BY: _____
Name:
Title:

SAMPLE ACORD CERTIFICATE

S A M P L E

ACORD™ CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) mm/dd/yy
PRODUCER SAMPLE INSURANCE AGENCY Street Address City, State, Zip Phone #	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED SAMPLE NAMED INSURED Street Address City, State, Zip Phone #	INSURERS AFFORDING COVERAGE INSURER A: SAMPLE INSURANCE COMPANY #1 INSURER B: SAMPLE INSURANCE COMPANY #2 INSURER C: INSURER D: INSURER E:	NAIC # #00000 #00001 # # #

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADD'L	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	<input checked="" type="checkbox"/>	GENERAL LIABILITY	policy number	begins	ends	EACH OCCURRENCE \$ 1,000,000
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$
		CLAIMSMADE <input checked="" type="checkbox"/> OCCUR				MCU EXP (Any one person) \$
						PERSONAL & ADV INJURY \$
		GEN'L AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE \$1,000,000
		<input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC				PRODUCTS - COMP/OP AGG \$1,000,000
		AUTOMOBILE LIABILITY				
B	<input checked="" type="checkbox"/>	ANY AUTO	policy number	begins	ends	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000
		ALLOWED AUTOS				BODILY INJURY (Per person) \$
		SCHEDULED AUTOS				BODILY INJURY (Per accident) \$
		<input checked="" type="checkbox"/> HIRED AUTOS				PROPERTY DAMAGE (Per accident) \$
		<input checked="" type="checkbox"/> NON-OWNED AUTOS				AUTO ONLY - EA ACCIDENT \$
						OTHER THAN EA ACC \$
						AUTO ONLY: AGG \$
		GARAGE LIABILITY				
		ANY AUTO				
		EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE \$
		<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMSMADE				AGGREGATE \$
		DEDUCTIBLE				\$
		RETENTION \$				\$
AA		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	policy number	begins	ends	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? IF YES, DESCRIBE UNDER SPECIAL PROVISIONS BELOW				E.L. EACH ACCIDENT \$ 500,000
						E.L. DISEASE - EA EMPLOYEE \$ 500,000
		OTHER				E.L. DISEASE - POLICY LIMIT \$ 500,000
A		Professional Liability	policy number	begins	ends	per occurrence \$ 1,000,000 aggregate \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

As required by the written contract DHA, its commissioners, officers, directors, employees, and volunteers are included as additional insured under the General Liability and Auto Liability policies. The captioned policies are written on a primary and non-contributory basis. Waiver of subrogation in favor of DHA applies regarding the General Liability, Auto Liability and Workers Compensation policies. Coverage shall not be suspended, voided, canceled, non-renewed or reduced in coverage or in limits except after thirty (30) days prior written notice to DHA.

CERTIFICATE HOLDER _____	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE _____ SIGNATURE _____
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