# REQUEST FOR PROPOSALS

## by the

# CITY OF BISHOP

## to provide

# MECHANICAL ENGINEERING SERVICES

## for the

# VALLEY APARTMENTS

**City of Bishop**
**377 West Line Street**
**Bishop, CA 93514**
**760-873-5863**
**cityclerk@cityofbishop.com**

March 30, 2018

**City of Bishop**

**REQUEST FOR PROPOSALS (RFP)**

**Mechanical Engineering Services**

**PROPOSAL DEADLINE:**

All proposals must be received at the following address no later than 4:30 p.m. City of Bishop local time, April 30, 2018.

**PROPOSAL SUBMISSION:**

An original and three (3) copies of the proposal must be submitted in a sealed package to CITY OF BISHOP. The package must be clearly marked with the words "RFP Response Documents-Valley Apartment Mechanical Engineering Services."

All proposals must be received at the following address by the proposal deadline stated above:

CITY OF BISHOP
377 West Line Street
Bishop, CA 93514
publicworks@cityofbishop.com

All responses submitted are subject to these instructions and the Instructions to the Offerors, Non-Construction form HUD 5369-B, contained in Appendix 2.

CITY OF BISHOP reserves the right to reject any or all proposals for cause and to waive any informality in the submission process if it is in the public interest to do so.

During the period between issuance of this RFP and the proposed due date, no oral interpretation of the RFP's requirements will be given to any prospective Offeror. Requests for interpretation (and other questions) must be made in writing at least 7 days before the submission due date and time to:

CITY OF BISHOP
377 West Line Street
Bishop, CA 93514
publicworks@cityofbishop.com

During the period of advertisement for this RFP, CITY OF BISHOP may wish to amend, add to, or delete from the contents of this RFP. In such situations, CITY OF BISHOP will issue an addendum to the RFP setting forth the nature of the modification. All addenda will be posted on the CITY OF BISHOP website at http://www.cityofbishop.com/ or distributed to the prospective vendors, if known, via U.S. Mail Service and/or email.

**Physical Needs Assessment**

**RFP**

**Table of Contents**

**Part I. Introduction and Overview**

CITY OF BISHOP is a small town located in the rural Eastern Sierra region of California. Incorporated in 1903, the municipality was organized as a "General Law" City in accordance with the California Government Code. The City operates under an elected Council/City Administrator form of government and is guided by a five-member City Council elected at large from the City's municipal boundaries.

Bishop has adopted a General Plan to guide the current and long-term growth and land development of the community. The Housing Element of the General Plan identifies and analyzes existing and projected housing needs and establishes goals, policies and implementing actions for the preservation, improvement and development of housing in the City. The Housing Element includes the following policies for the preservation of affordable housing stock:

- The City encourages maintenance of all residential uses, even if new or non-conforming, and upgrades to new, existing; and
- The City encourages maintenance of units and properties in need of repairs in order to reduce the number of units in need of complete replacement in the future.

Inyo Mono Advocates for Community Action, Inc. (IMACA), a Community Action Agency, purchased a motor court located at 156 E. Clarke Street in 1980 with funding from the State Department of Housing and Community Development (HCD). The Agency then converted the commercial buildings into the Valley Apartments, a 19-unit, multi-family rental housing project for occupancy by low-income seniors and persons with disabilities. The structures were originally constructed in 1940 and 1950 and are in need of significant improvement to maintain a safe and habitable living environment for the residents.

To preserve the affordable units at Valley, the City submitted a Community Development Block Grant (CDBG) application to HCD in 2013 and was awarded $781,708 to reconstruct the apartments. Financing could not be obtained for the project and HCD subsequently approved a revised proposal to substantially rehabilitate the apartment complex occupied by low-income seniors and persons with disabilities. Rehabilitation projects at the complex will include electrical, plumbing, paving, and cosmetic repairs, as well as installation of Solar Photovoltaic system. This RFP requires that the selected Contractor prepare the plans and technical specifications for plumbing repairs at the 19-unit complex.

CITY OF BISHOP is seeking a professional consultant to undertake and complete the following according to HCD and HUD requirements and protocols, and including any supplemental services the City may request herein:

- Provide engineered plans for plumbing repairs at the 19-unit Valley Apartment's complex that include the following tasks:
    - A complete domestic water system design to replace the existing system serving the 19 apartment units,
    - An electric water heater service connection and control system design to connect to photovoltaic solar panels,
    - Design services addressing all demolition and repairs required to install the new domestic water system,
    - Installation of new on-demand electric system to integrate with existing high-efficiency water heater, and
    - Replacement of all plumbing fixtures with water conservation fixtures,
    - Bidding and construction support.

  Attend site visits and meetings with City of Bishop and IMACA staff as needed to provide the plans and specifications described above.

## Part II. Scope of Services

### 1. General Overview

**1.1.** CITY OF BISHOP hereby requests proposals from qualified firms and individuals to provide engineered plans and technical specifications for plumbing repairs in accordance with all current HCD regulations, and other guidance as may be issued from time to time, as well as preparation of a Scope of Work to inform future bid and contract documents for soliciting qualified contractors to complete the repairs.

**1.2.** The RFP will reflect 19 units in the Valley Apartments project as identified in Appendix 2 of this RFP.

**1.3.** Appendix 2 contains project information with the date of construction and total number of units.

**1.4.** The results of the engineered plans and technical specifications will provide CITY OF BISHOP and IMACA the necessary documents and information to prepare bid and contract documents to solicit qualified contractors to complete the scope of work.

### 2. Plumbing Repairs Scope of Work/Technical Specifications

The City of Bishop is requesting proposals from qualified and licensed entities to provide the following detailed services:

**2.1. General Requirements:** The selected Contractor will provide engineered plans and technical specifications for plumbing repairs at the 19 unit valley apartment complex, including replacement of a complete domestic water system design and reconfiguration of the domestic hot water system. All designs will meet or exceed HCD mandatory standards, and those established by local and state health, safety, and building codes. The effort should provide the City and IMACA the materials necessary to prepare contract and bid documents to solicit a qualified contractor to implement the designs in the future.

**2.1.1.** Perform a walkthrough assessment of the Valley Apartments to access the existing conditions of the domestic water system, hot water system, and building condition and layout.

**2.1.2.** Provide plans to provide a complete domestic water system to replace the existing system to all 19 apartments.

**2.1.3** Provide plans to reconfigure the domestic hot water system and control system design to connect to photovoltaic solar panels.

**2.1.4** Provide design services addressing all demolition and repairs required to install the new domestic water system.

**2.1.5** Provide design services for the installation of new on-demand electric system to integrate with existing high-efficiency water heater.

**2.1.6** Provide design services to replace all plumbing fixtures with water conservation fixtures.

**3. Deliverables and Timeframe**

| Deliverables | Timeframes/Milestones |
|---|---|
| Walkthrough Assessment of Valley Apartments | At a time and date agreeable to the City of Bishop and the Contractor, within 15 days after the effective date of the Notice To Proceed (NTP). |
| Complete draft plumbing plans and specifications, including any electrical or architectural plans required to accommodate plumbing repairs | Within 30 days after the effective date of the Notice To Proceed (NTP). |
| Complete final plumbing plans and specifications | Within 15 days after receiving comments from the City of Bishop regarding draft plans. |

**3.3.** All plans and specifications are to be sent to:

CITY OF BISHOP
Attn: Elaine Kabala
377 West Line Street
Bishop, CA 93514
EKabala@CityofBishop.com

**Part III. Qualifications**

In order to be considered qualified to perform the services under the Scope of Work, contractors performing the engineering work must have the following qualifications:

1. State and local license as required.

**Part IV. Proposal Submission**

Proposal: A qualifying proposal must address the entire scope of work and include:

1. Brief description of firm, contact person, address, telephone number, and e-mail address.

2. Description of approach to work.

3. Resumes of staff involved.

4. Proposed work schedule.

5. Proposed method of payment.

6. Cost proposal submitted in a separate sealed envelope.

**Part V. Evaluation and Selection**

**Basis for award.** The contract will be awarded to the firm whose proposal is determined by CITY OF BISHOP to be the most advantageous to the City, with price and other technical factors considered.

Technical factors include:

1. Experience. Firm's experience in performing mechanical engineering work. Emphasis should be placed on experience with public housing agencies and domestic water systems.

2. Qualifications. Identify the qualifications of the principals and staff performing work.

3. Approach/Work Plan. Firms must identify how they plan to undertake the activities under the Scope of Services provided in Part II, and the proposed timeline.

4. Section 3 and Small, Minority- and Women-Owned Businesses.

    - Firms must provide documentation regarding their status as either a Section 3 business concern or a small, minority- or woman-owned business concern.

    - Firms must submit separate plans as to how they intend to meet the individual requirements of 24 CFR 135 to provide economic opportunities for low-income persons in the jurisdiction of CITY OF BISHOP and 24 CFR 200 for small, minority- and women-owned business enterprises.

Relative weight of technical evaluation factors:

| **Factors** | **Points** |
|---|---|
| 1. Experience. | 30 |
| 2. Qualifications. | 20 |
| 3. Approach/Work Plan. | 20 |
| 4. Section 3/MBE. | 10 |
| 5. Pricing. | 20 |
| **Total Points** | **100** |

Price will be considered in conjunction with technical factors by the CITY OF BISHOP to determine the proposal that is most advantageous and offers the best value to CITY OF BISHOP.

**Part VI. Other Relevant Information**

The contract executed pursuant to this RFP is deemed to include:

1. The specific contract document provided by CITY OF BISHOP.

2. This RFP in its entirety.

3. Required HUD forms:

    - Form HUD-5369-A, Instructions to Offerors – Non-Construction, is included in Appendix 2 and is part of this RFP. It is the Contractor's responsibility to carefully review the provisions.

    - Form HUD-5370-C, General Conditions for Non-Construction Contracts, Section I, is deemed to be a part of this RFP and the contract awarded under this RFP. The Contractor is expected to fully comply with this contract form.

The term of this contract is 60 days. There are no option periods.

The Contractor is expected to provide all labor and materials necessary to accomplish the Scope of Services contained in Part II of this RFP.

The Contractor will be paid upon completion of the contract and satisfaction of all contract and deliverable requirements contained in Part II, Section 4, of this RFP.

Appendix 1

**CITY OF BISHOP**
**PROFESSIONAL SERVICE AGREEMENT**
**WITH**
**[INSERT CONSULTANT'S NAME]**

This PROFESSIONAL SERVICE AGREEMENT ("Agreement"), is made and effective as of ____ day of _____, 20___ , between the City of Bishop, a municipal corporation, organized under the laws of the State of California, with its principal place of business at 377 West Line Street, Bishop, California, 93514 ("AGENCY") and [INSERT NAME OF CONSULTANT], *[a sole proprietorship, partnership, limited liability partnership, corporation], with its principal place of business at [INSERT ADDRESS]* ("CONSULTANT"). Agency and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties." In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

**1. TERM**

This Agreement shall commence on ____ day of _____, 20___ and shall remain and continue in effect until tasks described herein are completed, but in no event later than ____ day of _____, 20___ unless sooner terminated pursuant to the provisions of this Agreement.

**2. SERVICES**

CONSULTANT shall perform the tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. CONSULTANT shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A. To the extent that Exhibit A is a proposal from CONSULTANT, such proposal is incorporated only for the description of the scope of services and no other terms and conditions from any such proposal shall apply to this Agreement unless specifically agreed to in writing.

**3. PERFORMANCE**

CONSULTANT shall at all times faithfully, competently and to the best of his/her ability, experience, and talent, perform all tasks described herein. CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of CONSULTANT hereunder in meeting its obligations under this Agreement.

**4. AGENCY MANAGEMENT**

AGENCY's * * * shall represent AGENCY in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by CONSULTANT, but not including the authority to enlarge the Tasks to Be Performed or change the compensation due to CONSULTANT. AGENCY's City Administrator shall be authorized to act on AGENCY's behalf and to execute all necessary documents which enlarge the Tasks to Be Performed or change CONSULTANT's compensation, subject to Section 5 hereof.

**5. PAYMENT**

(a) The AGENCY agrees to pay CONSULTANT monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed * * * dollars ($* * *) for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) CONSULTANT shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the AGENCY's City Administrator. CONSULTANT shall be compensated for any additional services in the amounts and in the manner as agreed to by City Administrator and CONSULTANT at the time AGENCY's written authorization is given to CONSULTANT for the performance of said services. [The City Administrator may approve additional work not to exceed ten percent (10%) of the amount of the Agreement, but in no event shall such sum exceed ten-thousand dollars ($10,000.00). Any additional work in excess of this amount shall be approved by the

City Council.]

(c) CONSULTANT will submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the AGENCY disputes any of CONSULTANT's fees it shall give written notice to CONSULTANT within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this Agreement shall be made within 45 days of receipt of an invoice therefore.

**6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE**

(a) The AGENCY may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the CONSULTANT at least ten (10) days prior written notice. Upon receipt of said notice, the CONSULTANT shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the AGENCY suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the AGENCY shall pay to CONSULTANT the actual value of the work performed up to the time of termination, provided that the work performed is of value to the AGENCY. Upon termination of the Agreement pursuant to this Section, the CONSULTANT will submit an invoice to the AGENCY pursuant to Section 5.

**7. DEFAULT OF CONSULTANT**

(a) The CONSULTANT's failure to comply with the provisions of this Agreement shall constitute a default. In the event that CONSULTANT is in default for cause under the terms of this Agreement, AGENCY shall have no obligation or duty to continue compensating CONSULTANT for any work performed after the date of default and can terminate this Agreement immediately by written notice to the CONSULTANT. If such failure by the CONSULTANT to make progress in the performance of work hereunder arises out of causes beyond the CONSULTANT's control, and without fault or negligence of the CONSULTANT, it shall not be considered a default.

(b) If the City Administrator or his/her designee determines that the CONSULTANT is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the CONSULTANT a written notice of the default. The CONSULTANT shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the CONSULTANT fails to cure its default within such period of time or fails to present the AGENCY with a written plan for the cure of the default, the AGENCY shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

**8. OWNERSHIP OF DOCUMENTS**

(a) CONSULTANT shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by AGENCY that relate to the performance of services under this Agreement. CONSULTANT shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. CONSULTANT shall provide free access to the representatives of AGENCY or its designees at reasonable times to such books and records; shall give AGENCY the right to examine and audit said books and records; shall permit AGENCY to make transcripts or copies therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to

this Agreement shall become the sole property of the AGENCY and may be used, reused, or otherwise disposed of by the AGENCY without the permission of the CONSULTANT. With respect to computer files, CONSULTANT shall make available to the AGENCY, at the CONSULTANT's office and upon reasonable written request by the AGENCY, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. CONSULTANT hereby grants to AGENCY all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by CONSULTANT in the course of providing the services under this Agreement.

**9. INDEMNIFICATION**

A. FOR PROFESSIONAL LIABILITY. To the fullest extent permitted by law, CONSULTANT shall indemnify, protect, defend and hold harmless AGENCY and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all claims, lawsuits, losses, liabilities, damages, costs and expenses, including attorney's fees and costs which arise out of, pertain to, or relate to the negligent acts, errors or omissions, recklessness, or willful misconduct of the CONSULTANT, its officers, agents, employees or subconsultants.

B. FOR ALL OTHER LIABILITIES. Notwithstanding the forgoing and without diminishing any rights of AGENCY under Section 9.A, for any liability, claim, demand, allegation against AGENCY arising out of, related to, or pertaining to any act or omission of CONSULTANT, but which is not Professional Liability, CONSULTANT shall defend, indemnify, and hold harmless AGENCY, its officials, employees, and agents ("Indemnified Parties") from and against any and all damages, costs, expenses (including reasonable attorney's fees and expert witness fees), judgments, settlements, and/or arbitration awards, whether for personal injury, property damage, economic injury, and arising out of, related to, on account of, or pertaining to the acts or omissions of the CONSULTANT, regardless of any concurrent or contributory negligence on the part of AGENCY, save and except for the sole or active negligence or willful misconduct of the AGENCY.

C. DUTY TO DEFEND. In the event the AGENCY, its officers, employees, agents and/or volunteers are made a party to any action, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this Agreement, and upon demand by AGENCY, CONSULTANT shall have an immediate duty to defend the AGENCY at CONSULTANT's cost or at AGENCY's option, to reimburse AGENCY for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters.

Payment by AGENCY is not a condition precedent to enforcement of this indemnity. In the event of any dispute between CONSULTANT and AGENCY, as to whether liability arises from the sole negligence of the AGENCY or its officers, employees, or agents, CONSULTANT will be obligated to pay for AGENCY's defense until such time as a final judgment has been entered adjudicating the AGENCY as solely negligent. CONSULTANT will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

**10. INSURANCE**

CONSULTANT shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit C attached to and part of this agreement.

**11. INDEPENDENT CONSULTANT**

(a) CONSULTANT is and shall at all times remain as to the AGENCY a wholly independent consultant and/or independent contractor. The personnel performing the services under this Agreement on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Neither AGENCY nor any of its officers, employees, or agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees, or agents, except as set forth in this Agreement. CONSULTANT shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the AGENCY. CONSULTANT shall not incur or have the power to incur any debt, obligation, or liability whatever against AGENCY, or bind AGENCY

in any manner.

(b) No employee benefits shall be available to CONSULTANT in connection with the performance of this Agreement. Except for the fees paid to CONSULTANT as provided in the Agreement, AGENCY shall not pay salaries, wages, or other compensation to CONSULTANT for performing services hereunder for AGENCY. AGENCY shall not be liable for compensation or indemnification to CONSULTANT for injury or sickness arising out of performing services hereunder.

**12. LEGAL RESPONSIBILITIES**

The CONSULTANT shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The CONSULTANT shall at all times observe and comply with all such laws and regulations. The AGENCY, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the CONSULTANT to comply with this Section.

**13. UNDUE INFLUENCE**

CONSULTANT declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of the AGENCY in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the AGENCY has or will receive compensation, directly or indirectly, from CONSULTANT, or from any officer, employee or agent of CONSULTANT, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the AGENCY to any and all remedies at law or in equity.

**14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES**

No member, officer, or employee of AGENCY, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

**15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST**

(a) All information gained by CONSULTANT in performance of this Agreement shall be considered confidential and shall not be released by CONSULTANT without AGENCY's prior written authorization. CONSULTANT, its officers, employees, agents, or subconsultants, shall not without written authorization from the City Administrator or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the AGENCY. Response to a subpoena or court order shall not be considered "voluntary" provided CONSULTANT gives AGENCY notice of such court order or subpoena.

(b) CONSULTANT shall promptly notify AGENCY should CONSULTANT, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request (“Discovery”), court order, or subpoena from any person or party regarding this Agreement and the work performed there under or with respect to any project or property located within the AGENCY, unless the AGENCY is a party to any lawsuit, arbitration, or administrative proceeding connected to such Discovery, or unless CONSULTANT is prohibited by law from informing the AGENCY of such Discovery . AGENCY retains the right, but has no obligation, to represent CONSULTANT and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless AGENCY is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to CONSULTANT in such proceeding, CONSULTANT agrees to cooperate fully with AGENCY and to provide the opportunity to review any response to discovery requests provided by CONSULTANT. However, AGENCY's right to review any such response does not imply or mean the right by AGENCY to control,

direct, or rewrite said response.

*[the following paragraph is only to be used when the AGENCY will be taking in a fee or deposit from an applicant and use that fund to retain the CONSULTANT to prepare an EIR, Specific Plan, or some other specific document or where the AGENCY is funding a similar development-type study]*

(c) CONSULTANT covenants that neither he/she nor any officer or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. CONSULTANT further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent, or subconsultant. CONSULTANT further covenants that CONSULTANT has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the AGENCY or the study area and further covenants and agrees that CONSULTANT and/or its subconsultants shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the AGENCY or the study area prior to the completion of the work under this Agreement.

**16. NOTICES**

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To AGENCY:
City of Bishop
377 West Line Street
Bishop, CA 93514
Attention: City Clerk

To CONSULTANT:
[INSERT BUSINESS NAME]
[INSERT STREET ADDRESS]
[INSERT CITY STATE ZIP]
ATTN: [INSERT NAME AND TITLE]

**17. ASSIGNMENT**

The CONSULTANT shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the AGENCY. Because of the personal nature of the services to be rendered pursuant to this Agreement, only CONSULTANT shall perform the services described in this Agreement.

* * * may use assistants, under his/her direct supervision, to perform some of the services under this Agreement. CONSULTANT shall provide AGENCY fourteen (14) days' notice prior to the departure of * * * from CONSULTANT's employ. Should he/she leave CONSULTANT's employ, the AGENCY shall have the option to immediately terminate this Agreement, within three (3) days of the close of said notice period. Upon termination of this Agreement, CONSULTANT's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the CONSULTANT.

Before retaining or contracting with any CONSULTANT for any services under this Agreement, CONSULTANT shall provide AGENCY with the identity of the proposed CONSULTANT, a copy of the proposed written contract between CONSULTANT and such subconsultant which shall include and indemnity provision similar to the one provided herein and identifying AGENCY as an indemnified party, or an incorporation of the indemnity provision provided herein, and proof that such proposed subconsultant carries insurance at least equal

to that required by this Agreement or obtain a written waiver from AGENCY for such insurance.

**18. LICENSES**

At all times during the term of this Agreement, CONSULTANT shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

**19. GOVERNING LAW**

The AGENCY and CONSULTANT understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with jurisdiction over the AGENCY.

**20. ENTIRE AGREEMENT**

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this Agreement or with respect to the terms and conditions of this Agreement, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

**21. WORK SCHEDULED/TIME OF COMPLETION**

*[this section is optional and should be included only when the project is particularly time-sensitive]*

AGENCY and CONSULTANT agree that time is of the essence in this Agreement. AGENCY and CONSULTANT further agree that CONSULTANT's failure to perform on or at the times set forth in this Agreement will damage and injure AGENCY, but the extent of such damage and injury is difficult or speculative to ascertain. Consequently, AGENCY and CONSULTANT agree that any failure to perform by CONSULTANT at or within the times set forth herein shall result in liquidated damages of * * * dollars ($* * *) per day for each and every day such performance is late or delayed. AGENCY and CONSULTANT agree that such sum is reasonable and fair. Furthermore, AGENCY and CONSULTANT agree that this Agreement is subject to Government Code Section 53069.85 and that each party hereto is familiar with and understands the obligations of said Section of the Government Code.

**22. CONTENTS OF REQUEST FOR PROPOSAL AND PROPOSAL**

CONSULTANT is bound by the contents of AGENCY's Request for Proposal, Exhibit "D" hereto and incorporated herein by this reference, and the contents of the proposal submitted by the CONSULTANT, Exhibit "E" hereto. In the event of conflict, the requirements of AGENCY's Request for Proposals and this Agreement shall take precedence over those contained in the CONSULTANT's proposals. The incorporation of the CONSULTANT's proposal shall be for the scope of services to be provided only, and any other terms and conditions included in such proposal shall have no force and effect on this Agreement or the relationship between CONSULTANT and/or AGENCY, unless expressly agreed to in writing.

**23. AUTHORITY TO EXECUTE THIS AGREEMENT**

The person or persons executing this Agreement on behalf of CONSULTANT warrants and represents that he/she has the authority to execute this Agreement on behalf of the CONSULTANT and has the authority to bind CONSULTANT to the performance of its obligations hereunder.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year first above written.

**CONSULTANT: [TYPE IN CONSULTANT NAME]**

By:_____

(Signature)

_____

(Print Name)

Its: _____
(Title)

_____
Taxpayer ID Number

[If Corporation, TWO SIGNATURES, President **OR** Vice President **AND** Secretary OR Treasurer REQUIRED]

**CITY OF BISHOP**

A Municipal Corporation

By:_____

[Type Name]

[Type Title: City Administrator or Department Head or Mayor]

**ATTEST:**

By:_____

Robin Picken

Assistant City Clerk

**APPROVED AS TO FORM:**

By:_____

Ryan R. Jones

City Attorney

| | | |
|---|---|---|
| Attachments: | Exhibit A | Tasks To Be Performed |
| | Exhibit B | Payment Schedule |
| | Exhibit C | Insurance Requirements |
| | Exhibit D | Request for Proposal |
| | Exhibit E | CONSULTANT's Proposal |

Revised: CJPIA 4/8/2013; COB 12/30/2016

# EXHIBIT A

## TASKS TO BE PERFORMED

# EXHIBIT B

## PAYMENT SCHEDULE

EXHIBIT C
INSURANCE REQUIREMENTS

*Prior to the beginning of and throughout the duration of the Work, CONSULTANT and its subcontractors shall maintain insurance in conformance with the requirements set forth below. CONSULTANT will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth herein, CONSULTANT agrees to amend, supplement or endorse the existing coverage to do so.*

*CONSULTANT acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to CONSULTANT in excess of the limits and coverage identified in this Agreement and which is applicable to a given loss, claim or demand, will be equally available to AGENCY.*

*CONSULTANT shall provide the following types and amounts of insurance:*

*[Note: verify minimum limit for each coverage with Risk Manager]*

1. Commercial General Liability Insurance: CONSULTANT shall maintain commercial general liability insurance including coverage for premises, products and completed operations, independent contractors/vendors, personal injury and contractual obligations. The limits of CONSULTANT's insurance shall apply to this Agreement as if set forth herein, but in no event shall provide combined single limits of coverage of not less than $1,000,000 per occurrence, $2,000,000 general aggregate. There shall be no cross liability exclusion for claims or suits by one insured against another.

2. Automobile Liability: CONSULTANT shall maintain automobile liability insurance, including owned, non-owned and hired vehicles, covering bodily injury and property damage for all activities of the CONSULTANT arising out of or in connection with the services provided under this Agreement. The limits of CONSULTANT's insurance shall apply to this Agreement as if set forth herein, but in no event shall be less than $1,000,000 per occurrence, combined single limit.

*[Note: may need to delete workers' compensation and employer's liability insurance requirements for certain sole proprietorships, partnerships, or corporations without employees]*

3. Workers Compensation: CONSULTANT shall maintain Worker's Compensation Insurance on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than $1,000,000 per accident or disease.

*[Note: If the required limits for general liability, auto and employer's liability are $1 million or less, the following paragraph may be omitted.]*

Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum $25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to AGENCY for injury to employees of CONSULTANT, subconsultants or others involved in the Work. The scope of coverage provided is subject to approval of AGENCY following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than $*** per occurrence.

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the CONSULTANT and "Covered Professional Services" as designated in the policy must specifically include work performed under this agreement. The policy limit shall be no less than $1,000,000 per claim and in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy and any renewal or subsequent policies' retroactive date shall be on or before the effective date of this agreement.

Insurance procured pursuant to these requirements shall be written by insurers that are

admitted carriers in the state of California and with an A.M. Bests rating of A- or better and a minimum financial size VII.

General conditions pertaining to provision of insurance coverage by CONSULTANT. CONSULTANT and AGENCY agree to the following with respect to insurance provided by CONSULTANT:

1. CONSULTANT agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds AGENCY, its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992 or similarly worded endorsement. CONSULTANT also agrees to require all contractors, and subcontractors to do likewise.

2. No liability insurance coverage provided to comply with this Agreement shall prohibit CONSULTANT, or CONSULTANT's employees, or agents, from waiving the right of subrogation prior to a loss. CONSULTANT agrees to waive subrogation rights against AGENCY regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.

3. All insurance coverage and limits provided by Contractor and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the AGENCY or its operations limits the application of such insurance coverage.

4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to AGENCY and approved of in writing.

5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.

6. All coverage types and limits required are subject to approval, modification and additional requirements by the AGENCY, as the need arises. CONSULTANT shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect AGENCY's protection without AGENCY's prior written consent.

7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to CONSULTANT's general liability policy, shall be delivered to AGENCY at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, AGENCY has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by AGENCY shall be charged to and promptly paid by CONSULTANT or deducted from sums due CONSULTANT, at AGENCY option.

8. Certificate(s) are to reflect that the insurer will provide 30 days notice to AGENCY of any cancellation of coverage. CONSULTANT agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.

9. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by CONSULTANT or any subcontractor, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self insurance available to AGENCY.

CONSULTANT shall ensure that each policy of insurance required herein reflects this agreement and is written into each policy.

10. CONSULTANT agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by CONSULTANT, provide the same minimum insurance coverage required of CONSULTANT. CONSULTANT agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. CONSULTANT agrees that upon request, all agreements with consultants, subcontractors and others engaged in the project will be submitted to AGENCY for review.

11. CONSULTANT agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to AGENCY without the AGENCY's prior written approval. If CONSULTANT's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the AGENCY. At that time the AGENCY shall review options with the CONSULTANT, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions. To the extent the AGENCY agrees to any deductible or self-insured retention under any policy required under this Agreement to which the AGENCY is named as an additional insured, CONSULTANT shall be required to modify the policy to permit the AGENCY to satisfy the deductible or self-insured retention in the event CONSULTANT is unable or unwilling to do so as a means to ensure the AGENCY can avail itself to the coverages provided under each policy.

12. The AGENCY reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the CONSULTANT ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the CONSULTANT, the AGENCY will negotiate additional compensation proportional to the increased benefit to AGENCY.

13. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.

14. CONSULTANT acknowledges and agrees that any actual or alleged failure on the part of AGENCY to inform CONSULTANT of non-compliance with any insurance requirement in no way imposes any additional obligations on AGENCY nor does it waive any rights hereunder in this or any other regard.

15. CONSULTANT will renew the required coverage annually as long as AGENCY, or its employees or agents face an exposure from operations of any type pursuant to this agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. Termination of this obligation is not effective until AGENCY executes a written statement to that effect.

16. CONSULTANT shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage and upon the same terms and conditions herein. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from CONSULTANT's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to AGENCY within five days of the expiration of the coverages.

17. The provisions of any workers' compensation or similar act will not limit the obligations of CONSULTANT under this agreement. CONSULTANT expressly agrees not to use any statutory immunity defenses under such laws with respect to AGENCY, its employees, officials and agents.

18. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements, or as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.

19. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.

20. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

21. CONSULTANT agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge AGENCY or CONSULTANT for the cost of additional insurance coverage required by this agreement. Any such provisions are to be deleted with reference to AGENCY. It is not the intent of AGENCY to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against AGENCY for payment of premiums or other amounts with respect thereto.

22. CONSULTANT agrees to provide immediate notice to AGENCY of any claim or loss against CONSULTANT arising out of the work performed under this agreement. AGENCY assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve AGENCY.

23. Primary/noncontributing.

    Coverages provided by (Vendor/Contractor/Consultant/Lessee-insert applicable term) shall be primary and any insurance or self-insurance procured or maintained by Agency shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of Agency before the Agency's own insurance or self-insurance shall be called upon to protect it as a named insured.

24. Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that (Vendor's/Consultant's/Contractor's) insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

EXHIBIT E
CONSULTANTS PROPOSAL

## Appendix 2: Description of Development Covered by the RFP

PROJECT LOCATION:

The site for this project is located on the south side of E. Clarke Street, approximately 534 feet east of South Main Street and 100 feet west of Sneden Street. The street address is 156 E. Clarke Street and the Tax Assessor Parcel Number (APN) for the property is 01-212-05. Dimensions for the site are 150 feet of street and alley frontage by 130 feet deep for a total of .45 acres of land area.

The legal description of the property is as follows:

Lots 4, 5 and 6 of Block "HE" of the John B. Clarke Addition to the City of Bishop, in the County of Inyo, State of California, as per map filed in Book 1 Page 67 of Maps, in the office of the County Recorder of said County. Excepting therefrom the South 9 feet as conveyed to the City of Bishop, in Book 10 Page 413 of Deeds.

The site is in a Por. N ½ Sec. 7, T.7 S. R.33 E., Mount Diablo Baseline and Meridian (M.D.B. & M.), in the southern portion of the City of Bishop, County of Inyo, and State of California.

EXISTING CONDITIONS:

The approximately .45 acre project site is located on the south side of Clarke Street between S. Main Street and Sneden Street and is currently developed with the Valley Apartments. The Valley Apartments include 19 affordable, senior-restricted dwelling units with 18 rentals and one caretaker's unit. The units are located in four attached one-story buildings which form a central courtyard and a separated, off-street parking area with 14 spaces. Vehicle access to the parking is from a driveway off Clarke Street. A one-way (west to east) alley abuts the site to the south and provides pedestrian but not vehicular access. Adjacent to the covered walkway between the alley and courtyard are laundry and utility room located in the western most building. There is a 500-gallon propane tank along the east property line. The propane tank and parking are shared with the IMACA Head Start Program property to the east. The site is completely covered with paving and buildings except for a large cottonwood tree and raised planter bed in the courtyard area and a small vegetable garden in the parking lot.

SURROUNDING LAND USES AND SETTING:

Inyo Mono Advocates for Community Action, Inc. (IMACA) is the property owner for the Valley Apartments and the Head Start Program site located to the east. Adjacent to the west of the Valley Apartments is a parking lot for an automobile sales and repair business. To the south, across a 19-foot wide alley, is an auto body and paint facility and commercial businesses. A day care center and single family residence are located to the north across Clarke Street. The Valley Apartments site and all surrounding properties are zoned C-1, General Commercial and Retail and designated General Commercial in the Land Use Element of the General Plan.

SITE DEVELOPMENT HISTORY:

A single-family residence with 727 square feet was constructed on the property in 1940. This dwelling is now the caretaker's unit for the Valley Apartments and is located at the northwest corner of the site. In 1950, an 18-room motel with approximately 5,554 square feet was built on the property adjoining the residence. All of the units contain a small kitchen and most of the apartments have approximately 260 square feet of living area. A couple of the apartments are slightly larger with more kitchen area. Two off-street parking areas with access from Clarke Street were also constructed for the site. The courtyard parking area, in which parking is now prohibited, included 16 spaces and two, one-way driveways. The east parking area, which is shared with IMACA Head Start, has 14 parking spaces and a one-way driveway off Clarke Street.

IMACA, with low-interest loans from the California Department of Housing and Community Development (HCD), purchased the motel complex and residence in 1981. Funding from the state was also used to rehabilitate the

structures and convert the motel into affordable apartments for seniors and people with disabilities. IMACA has owned and managed the apartment complex for over 35 years and the structures are showing age and deterioration. Major repairs have been made to many of the dwellings and the water and electrical delivery infrastructure is in need of improvement.

To preserve the affordable rental units at Valley Apartments, the City submitted a Community Development Block Grant (CDBG) application to HCD in 2013 and was awarded $781,708 to reconstruct the multi-family complex. Financing could not be obtained for the project and HCD subsequently approved a revised proposal to substantially rehabilitate the apartment complex occupied by low-income seniors and persons with disabilities. Engineered plans and technical specifications for plumbing repairs are required to solicit bids from qualified contractors to complete the scope of work.

## Appendix 3: Form HUD 5369-B. Instructions to Offerors – Non-Construction

**Available for review at http://portal.hud.gov/hudportal/documents/huddoc?id=5369-b.pdf.**

**Appendix 4: Form HUD 5370-C. General Conditions for Non-Construction Contracts, Section I**

# General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

**U.S. Department of Housing and Urban Development**
Office of Public and Indian Housing
Office of Labor Relations
OMB Approval No. 2577-0157 (exp. 1/31/2017)



**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 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

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 been titled to payment as described in paragraph (b) above.

(e) Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

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

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

(b) The Contractor agrees to include in first-tier subcontracts

under this contract a clause substantially the same as 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; 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 of the HA.
(c) In the event the Contractor was aware of an organizational

conflict of interest before the award of this contract and 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 pubic 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 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.

# General Conditions for Non-Construction Contracts

Section II – (With Maintenance Work)

**U.S. Department of Housing and Urban Development**
Office of Public and Indian Housing
Office of Labor Relations
OMB Approval No. 2577-0157 (exp. 1/31/2017)



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

1) Non-construction contracts (*without* maintenance) greater than $100,000 - use Section I;
2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 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 II – Labor Standard Provisions for all Maintenance Contracts greater than $2,000**

**1. Minimum Wages**

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

(b) (i) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate only when the following criteria have been met:

(1) The work to be performed by the classification required is not performed by a classification in the wage determination;

(2) The classification is utilized in the area by the industry; and

(3) The proposed wage rate bears a reasonable relationship to the wage rates contained in the wage determination.

(ii) The wage rate determined pursuant to this paragraph shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

**2. Withholding of funds**

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

**3. Records**

(a) The Contractor and each subcontractor shall make and maintain for three (3) years from the completion of the work records containing the following for each laborer and mechanic:

(i) Name, address and Social Security Number;
(ii) Correct work classification or classifications;
(iii) Hourly rate or rates of monetary wages paid;
(iv) Rate or rates of any fringe benefits provided;
(v) Number of daily and weekly hours worked;
(vi) Gross wages earned;
(vii) Any deductions made; and
(viii) Actual wages paid.

(b) The Contractor and each subcontractor shall make the records required under paragraph 3(a) available for inspection, copying, or transcription by authorized representatives of HUD or the HA and shall permit such representatives to interview employees during working hours on the job. If the Contractor or any subcontractor fails to make the required records available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds.

**4. Apprentices and Trainees**

(a) Apprentices and trainees will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in:

A bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration (ETA), Office of

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

(ii) trainee program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, ETA; or

(iii) A training/trainee program that has received prior approval by HUD.

(b) Each apprentice or trainee must be paid at not less than the rate specified in the registered or approved program for the apprentice's/trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices and trainees shall be paid fringe benefits in accordance with the provisions of the registered or approved program. If the program does not specify fringe benefits, apprentices/trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.

(c) The allowable ratio of apprentices or trainees to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the employer as to the entire work force under the approved program.

(d) Any worker employed at an apprentice or trainee wage rate who is not registered in an approved program, and any apprentice or trainee performing work on the job site in excess of the ratio permitted under the approved program, shall be paid not less than the applicable wage rate on the performed.

(e) In the event OATELS, a state apprenticeship agency recognized by OATELS or ETA, or HUD, withdraws approval of an apprenticeship or trainee program, the employer will no longer be permitted to utilize apprentices/trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**5. Disputes concerning labor standards**

(a) Disputes arising out of the labor standards provisions contained in Section II of this form HUD-5370-C, other than those in Paragraph 6, shall be subject to the following procedures. Disputes within the meaning of this paragraph include disputes between the Contractor (or any of its subcontractors) and the HA, or HUD, or the employees or their representatives, concerning payment of prevailing wage rates or proper classification. The procedures in this section may be initiated upon HUD's own motion, upon referral of the HA, or upon request of the Contractor or subcontractor(s).

(i) A Contractor and/or subcontractor or other interested party desiring reconsideration of findings of violation by the HA or HUD relating to the payment of straight-time prevailing wages or classification of work shall request such reconsideration by letter postmarked within 30 calendar days of the date of notice of findings issued by the HA or HUD. The request shall set forth those findings that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The request shall be directed to the appropriate HA or HUD official in accordance with instructions contained in the notice of findings or, if the notice does not specify to whom a request should be made, to the Regional Labor Relations Officer (HUD). The HA

(ii) or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The Regional Labor

(iii) Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.

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

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

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

(a) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(b) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in paragraph 6(a), the Contractor and any

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

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

**7. Subcontracts**

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

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

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