

HARRIS COUNTY HOUSING AUTHORITY
8933 Interchange
Houston, Texas, 77054

REQUEST FOR PROPOSALS

RFP # 14-01

**Developers of Multi-Family Housing
Private Activity Bond & 4% and /or 9% Low-Income Housing Tax Credit Projects**

The Harris County Housing Authority (**HCHA**) is requesting proposals from qualified not-for-profit or for-profit multi-family housing developers to construct affordable housing developments utilizing a combination of tax exempt Private Activity Bond proceeds and 4% Low Income Housing Tax Credits (**LIHTC**) and/or to purchase existing 9% **LIHTC** developments on properties located by the developers and acquired in Harris County outside of the City Limits of the City of Houston, Texas.

This **RFP** contains submission requirements, scope of services, period of services, terms and conditions and other pertinent information for submitting a proper and responsive proposal. Prospective Offerors desiring any explanation or interpretation of the solicitation must request it in writing by no later than September 9, 2014. The request must be addressed to Horace Allison, AIA, Chief Development Officer at the address and location contained herein. Any information provided to a prospective Offeror about this solicitation will be furnished to all other prospective Offerors as a written amendment to the solicitation.

A Pre-Proposal Conference is scheduled for September 5, 2014, 10:00 a.m. (CST) in the **HCHA** Boardroom, 2nd Floor, 8933 Interchange, Houston, TX 77054.

The **RFP** must be enclosed in a sealed envelope and labeled “**Proposal for Developers of Multi-Family Housing, Private Activity Bond & 4% and/or 9% Low-Income Housing Tax Credit Projects, RFP No. 14-01, Due Date and Time: September 23, 4:00 P.M. (CST)**”. The

RFP must be addressed to Horace Allison, AIA, Harris County Housing Authority, 8933 Interchange, Houston, Texas 77054.

Proposals must reach the **HCHA** no later than the specified due date. Late submissions will be handled in accordance with the provisions in Form HUD-5369-B titled "Late Submissions, Modifications, and Withdrawal of Offers". Proposals will be held in confidence and not released in any manner until after the contract award.

The **HCHA** reserves the right to reject any and all proposals

Horace Allison, AIA

Date

Horace C. Allison, AIA
Chief Development Officer
Harris County HCHA

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Attachment A: Sample Memorandum of Understanding

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Attachment D: Form HUD-5369-B, Instructions to Offerors Non-Construction

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- Attachment F: Form HUD-5370-C1, General Contract Conditions, Non-Construction
- Attachment G: Conflict of Interest Questionnaire (CIQ)
- Attachment H: Section 3 Policy

1.0 INVITATION TO SUBMIT PROPOSALS

The Harris County Housing Authority (**HCHA**) or one of its affiliates HCHA seeks proposals from qualified not-for-profit or for-profit housing developers to construct affordable housing using tax exempt bond proceeds and 4% and/or desirous of selling the General Partnership interest in and rehabilitating an existing 9% Low-Income Housing Tax Credit Development. The selected developer(s) will apply for multifamily housing revenue Bond financing from the **HCHA** and for a 4% Low-Income Housing Tax Credit (**LIHTC**) allocation from the Texas Department of Housing and Community Affairs (**TDHCA**) and/or be desirous of selling the General Partnership Interest in an existing 9% **LIHTC** Development. Projects sites are to be proposed by the Respondents, but must be on land located outside of the City Limits of Houston but within Harris County in High Opportunity Areas, non-impacted census tracks as defined by the Community Development Block Grant – Disaster Relief Program and the **TDHCA**. Title to one or more selected sites will be acquired by the **HCHA** or an entity controlled by the HCHA. The **HCHA** will apply to the Texas Bond Review Board (**TBRB**) for a Private Activity Bond allocation and /or work with the developer to acquire the GP Interest in and rehabilitate an existing project. In the event that the Project contains deep targeted units and/or the developer is willing to target additional units in an existing transaction, the **HCHA** will provide some amount of funding to assist in the development of or acquisition of the GP Interest of the project. Community Development Block Grant – Disaster Relief Funds (**CDBG-DR**) funds will be provided by the **HCHA**. The funds provided by the **HCHA** are federal funds; the recipient project will be subject to Davis-Bacon wages, Section 3 and M/WBE requirements. The remaining funding for the selected project(s) will be tax credit equity, and other funds obtained by the developer.

With this **RFP**, the **HCHA** is seeking to fund one or more proposals from developers or development teams for the new construction and/or acquisition of an affordable housing project. Selected developers must enter into a Memorandum of Understanding with the **HCHA** by not later than October 8, 2014, in order to continue to qualify under this **RFP**. A Sample Memorandum of Understanding is provided (see Attachment A). The terms of the Sample Memorandum of Understanding are negotiable by the parties, but the Sample Memorandum of Understanding is provided to give an indication of the **HCHA**'s initial negotiating position.

Once a Memorandum of Understanding is executed by **HCHA** and a developer, it will be presented to the **HCHA** Board of Commissioners for approval. If the Memorandum of Understanding is approved by the **HCHA** Board of Commissioners, then the development partnership, the developer and the **HCHA** will negotiate and enter into a Development and/or GP Interest Purchase Agreement. The Development and/or GP Interest Purchase Agreement will cover all aspects of the project transaction, but will follow the Memorandum of Understanding as its essential guide. The Development Agreement and/or GP Interest Purchase Agreement must be executed by October 30, 2014, in order for the selected developer to continue to qualify under this **RFP**. The developer's deadlines for executing the Development and/or GP Interest Purchase Agreement and/or for closing on the construction financing may be extended by the **HCHA**, in its sole discretion, on a case-by-case basis.

Developers responding to this **RFP** are not precluded from submitting proposals or bids on other subsequent **RFPs** from the **HCHA**.

2.0 GENERAL BACKGROUND

A. HCHA's Activities

The Harris County HCHA ("**HCHA**") is currently governed by the Housing Authorities Law, codified in the Texas Local Government Code. It is a unit of government and its functions are essential governmental functions. It operates and manages its housing developments to provide decent, safe, sanitary and affordable housing to low income families, the elderly, and the disabled, and implements various programs designed and funded by the U.S. Department of Housing and Urban Development ("**HUD**"). The **HCHA** is a Public Housing Agency.

The property of the **HCHA** is used for essential public and governmental purposes. The **HCHA** and its property are exempt from all taxes, including sales tax on all its purchases of supplies and services.

The **HCHA** enters into and executes contracts and other instruments that are necessary and convenient for the exercise of its powers.

The **HCHA** maintains contractual arrangements with **HUD** to manage and operate its Affordable Housing Development Program and administers the Housing Choice Voucher (**HCV** or **Section 8**) Program. The **HCHA** programs are privately and federally funded. The **HCHA** revenue is received from federal funds, administrative fees, development grants and rental income. The **HCHA**, in partnership with the private sector, developed eight affordable housing developments.

The **HCHA** currently employs 38 regular full time staff, owns and manages over 1,038 affordable housing units and administers rental assistance for 4100 privately owned rental units through the Section 8 **HCV** programs. Total **HCHA** operating and development budget for the fiscal year 2014 is approximately \$4.6 million.

B. Private Activity Bonds

Private Activity Bonds are a federal tool created by the Tax Reform Act of 1986 that assist with the production of affordable rental housing for qualified low-income tenants by providing the developer with a financing incentive. A bond is an interest bearing government or corporate note that obligates the borrower to make scheduled principal and interest payments to the investor and repay the principal amount of the loan at maturity. Developers use the amount borrowed from investors to create affordable housing by setting aside a certain percentage of units to be leased to eligible low-income tenants at an affordable rate. The mortgage payments on the loan are used to repay the investors. Qualified residential rental projects issued bonds under the Private

Activity Bond program are typically tax-exempt and used to provide low interest loans to the development, in turn having a mortgage on the property.

Once selected, Bond Counsel will need to prepare and submit to the **HCHA** an “Inducement Resolution” for approval. Upon approval by the HCHA, an application will be submitted to the Texas Bond Review Board (**TBRB**) for a “Reservation of Allocation.” Once the reservation is issued by the **TBRB**, the transaction must close within 150 days or it will be cancelled. During the same timeframe and upon the approval of the Bond Inducement Resolution by the **HCHA**, the Respondent is to immediately proceed with the submission of a 4% **LIHTC** application to **TDHCA**.

C. Low-Income Housing Tax Credits

The Low-Income Housing Tax Credit (**LIHTC**) Program is authorized by the U.S. Treasury Department to allow the **TDHCA** to provide tax credits to nonprofits, for-profit developers and syndicators or investors. The program is intended to benefit families living at or below 60% AMFI and serves to foster the maintenance and development of rental housing for low-income families. In addition, the Program encourages the participation of for-profit and nonprofit service providers. The goal is to maximize the amount of new units added to each state’s supply of affordable housing and to prevent losses from its current supply. The **LIHTC** Program provides investors of affordable rental housing with a tax credit benefit used to offset part of their federal tax liability, allowing units to be leased to qualified tenants at rents below market rate.

To qualify for **LIHTCs**, the proposed development must entail new construction or substantial rehabilitation of housing units (typically defined as at least \$20,000 per rental unit of construction hard costs) depending on the age of the Development. The development is eligible for a certain credit amount based on the total amount of depreciable capital improvements, the percentage of units set aside for eligible tenants, and the funding sources available to finance the entire cost of development. The **LIHTC** Program, governed by Section 42 of the Internal Revenue Code (the “Code”), must include a minimum percentage of rent restricted units be set aside for qualified tenants. To qualify for residential rental occupancy, the development must meet one of the following two requirements: (1) 20% or more of the residential units are both rent-restricted and occupied by tenants earning at or below 50% AMFI; or (2) 40% or more of the residential units are both rent restricted and occupied by tenants earning at or below 60% AMFI. Because tax credits may only be claimed on the units that have been set aside for eligible tenants, the percentage of total units set aside will affect the amount of tax credits the project is entitled to, up to 100%.

3.0 PROCUREMENT SCHEDULE

The anticipated schedule for the RFP is as follows:

KEY RFP DATES	
EVENT	DATE
Advertisement for Proposals	August 21 & 31, 2014
Pre-Proposal Conference	September 5, 2014
Deadline for receipt of written questions	September 9, 2014
Response to written questions	September 12, 2014
Proposal Due Date	September 23, 2014
Review and Selection	September 30, 2014

Definitions

Developer/Proposer/Offeror/Respondent

As used herein, the terms Developer, Proposer, Offeror and Respondent are interchangeable.

4.0 SCOPE OF THE DEVELOPER FOR MULTI-FAMILY HOUSING

The **HCHA**'s goal in issuing this RFP is to provide additional affordable rental housing options for low-income residents in the Harris County.

A. Project Description

The **HCHA** is looking for one or more 4% LIHTC projects located outside of the City of Houston City Limits but within Harris County, which require assistance in financing and/or one or more existing projects where the Developer is desirous of selling the GP Interest. To maximize the competitiveness of a proposal, the development should maximize the targeting of tenants in the 0%-30% Area Median Income Range (deep targeted units) or purchase of an existing LIHTC development.

If the project will contains deep targeted units, the **HCHA** will provide capital resources to develop and/or to acquire the GP Interest in the project.

The **HCHA** has capital resources (CDBG-DR) for this Initiative. The selected developer is responsible for preparing a **LIHTC** application in the 2014 round, as well as identifying additional funding from private and/or non-governmental sources, including foundations and private organizations.

B. The Proposed Initiatives

New Construction Projects: This initiative is being undertaken by the **HCHA** to provide additional affordable housing options for families in Harris County. The initiative has the following core elements:

1. *New Housing.* New multifamily units will be constructed which respect the development patterns and scale of the surrounding community to provide a housing resource for low-income residents in the Harris County (**outside the City Limits of Houston, Texas**).
2. *Acceptable Site.* The HCHA must approve the location and condition of the proposed site i.e. High Opportunity Area and Non-Impacted Census tracts. The selected developer(s) will be required to provide a Phase I Environmental Survey to the **HCHA** for projects proposing new construction, and the **HCHA**'s selection of any new construction project is subject to an acceptable Phase I.
3. *Ownership Structure.* Fee title to the land will be taken in the name of the **HCHA** or a related tax-exempt entity and the land will be leased back to the development partnership on a long-term ground lease (99 years). At the equity and construction loan closing, the development partnership will pay the **HCHA** or its related tax-exempt entity an up-front lease payment that will be used to acquire title to the land. A **HCHA** controlled entity will serve as the sole general partner of the development partnership. Development of the project will be turn-key, with the developer providing a fixed-price construction contract with a general contractor who will be identified in the developer's response to this **RFP**.
4. *Financing Sources.* This initiative will be financed from a combination that may include tax-exempt bond proceeds, funds from the **HCHA** (CDBG-DR), Low-Income Housing Tax Credits, and private resources. The selected developer is responsible for seeking all private funds needed for the project, and such funding must be identified in the response to this **RFP**. Proposals must identify and justify the amount of **HCHA** resources that are needed for the proposed project.

Acquisition on the General Partnership Interest: This initiative is being undertaken by the **HCHA** to acquire additional affordable housing options for families in Harris County. The initiative has the following core elements:

1. *Existing Housing.* Existing multifamily project must respect the development patterns and scale of the surrounding community to provide a housing resource for low-income residents in the Harris County (**outside the City Limits of Houston, Texas**).
2. *Acceptable Site.* The **HCHA** and the CDBG-DR Program office must approve the location and condition of the proposed site i.e. High Opportunity Area and Non-Impacted Census tracts as defined by the CDBG-DR Program.

3. *Ownership Structure.* Fee title to the land will be taken in the name of the **HCHA** or a related tax-exempt entity and the land will be leased back to the development partnership on a long-term ground lease (99 years). At the equity and construction loan closing, the development partnership will pay the **HCHA** or its related tax-exempt entity an up-front lease payment that will be used to acquire title to the land. A **HCHA** controlled entity will serve as the sole general partner of the development partnership.
4. *Financing Sources.* This initiative will be financed from a combination of funds from the **HCHA** (CDBG-DR) and private resources. The selected developer is responsible for seeking all private funds needed for the project, and such funding must be identified in the response to this **RFP**. Proposals must identify and justify the amount of **HCHA** resources that are needed for the proposed project.

C. **HCHA's Role**

The **HCHA** has assembled a team of legal, financial, and architectural/planning experts (the "**HCHA Team**") to assist in the implementation of this initiative. The **HCHA** will assume one or more of the following roles in the development of the selected project(s):

1. *Lender/Grantor.* **HCHA** and/or other funds may be made available for use by the developer for the development of the project. Only new construction developments i.e where construction documents are 90+% complete and/or existing developments will be considered.
2. *Asset Manager.* The **HCHA** will monitor and enforce the terms of the Agreements.
3. *Supportive Services and Economic Development Program Provider.* The **HCHA** will monitor the supportive services and economic development programs.
4. *Landlord.* The **HCHA** or its related entity will be the owner of the fee title to the land, and will lease the land to the development partnership on a 99-year ground lease. Upon termination or expiration of the ground lease, the improvements located thereon will belong to the Landlord.
5. *Development Partner.* The **HCHA** will receive a share of the developer fee and cash flow in consideration of its contributions to the development of the project. The specific fee structure will be negotiated; however, the **HCHA** does not intend to have significant involvement in the day-to-day development activities.

D. Developer's Role

The responsibilities of the selected developer(s) will include, but are not limited to, the following:

- Undertake predevelopment activities;
- Develop architectural plans and construction documents and specifications consistent with HUD guidelines, and obtain City approvals and permits;
- Develop and manage an implementation schedule;
- Obtain additional leveraged funds from private, non-governmental sources;
- Develop a project budget;
- Coordinate all development activities, including reporting and budget requirements, with **HCHA**;
- Determine a general management structure and prepare a management plan for the property. If a property manager has not been selected by the developer at the time the proposal is submitted, then the developer shall subsequently recommend a property manager, subject to approval by the **HCHA**;
- Provide all necessary financial guarantees and assurances to the lenders and tax credit investors;
- Develop and implement a "Section 3" resident employment program;
- If the developer has already entered into a construction contract, then a copy of that contract and a resume and at least three (3) references for the general contractor shall be submitted with the proposal. If a general contractor has not already been selected by the developer at the time of the submission of the proposal, then the developer shall subsequently solicit construction bids and enter into a contract for construction, subject to **HCHA** approval of the general contractor and the terms of the construction contract. If the contractor is affiliated with the developer, a third-party cost estimate will be required prior to closing to confirm the reasonableness of the construction costs;
- Oversee construction and ensure completion in a timely manner;
- If the developer has already entered into commitment letters with lender(s), tax credit investor(s) or a tax credit syndicator, then such commitment letters shall be provided in the proposal. If the developer shall subsequently obtain commitments from one or more lenders, and tax credit investors or a tax credit syndicator, for financing the

project, such commitments to be on forms and with parties reasonably acceptable to the **HCHA**;

- The Developer will obtain at least three proposals from Tax credit Investors and **HCHA** and the Developer will jointly select the Investor.
- Provide all required guarantees to the tax credit investor and lender; and
- Deliver units consistent with **LIHTC** and CDBG-DR regulations.

A Development and/or the GP Interest Purchase Agreement governing the responsibilities of the parties will also be negotiated. This Development and/or GP Interest Purchase Agreement must be executed by the parties not later than October 30, 2014, subject to extension on a case-by-case basis at the **HCHA**'s sole discretion.

E. HCHA Financial Resources

The **HCHA** can provide the following types of financial resources to facilitate the development or acquisition of the selected project(s):

1. CDB-DR Funds

Funds may be made available from the **HCHA** to be used to offset the production and operation of the housing units. Funds can be either in the form of a grant or a loan.

2. Other Financial Resources

The Developer is expected to cause the project to qualify for and/or remain qualified for Low Income Housing Tax Credits. Additional private resources needed to complete the project will be the responsibility of the developer.

F. Income Structure and Use Restrictions

The **HCHA** seeks to provide housing to serve a mix of market rate households, including the low and very low income. Respondents may target occupancy to low-income households with incomes from 0% to 100% of area median income (and subject to any income restrictions associated with other funding sources).

G. Project Design Review

The **HCHA** and the Developer will enter into a Development and or GP Interest Purchase Agreement that will set forth the parameters of the transaction.

For new construction projects Respondents must submit with the proposal construction documents and specifications for the intended project that are at least 90+% complete. The

HCHA will review all design and construction documents and specifications. All changes to design and construction documents and specifications will be subject to the **HCHA**'s written approval.

The project must be located in High Opportunity Area and a non-impacted census tracts as define under the terms of the CDBG-DR and **TDHCA** Programs.

H. Legal and Ownership Structure

The **HCHA** shall have the right to negotiate and approve the agreement of limited partnership and/or amended and restated limited partnership agreement prior to execution by the general partner and the tax credit investor limited partner.

5.0 SELECTION PROCESS

A. Development Team

The development team must be capable of handling the development, sale transaction and ongoing oversight of a rental development project. The following will be viewed as favorable by the selection committee:

- a) Previous experience developing affordable housing of 100 units or more;
- b) Previous experience involving layered financing including, but not limited to, Low-Income Housing Tax Credits, CDBG-DR Funds, etc.;
- c) Financial capacity to complete the project, including providing all necessary guaranties;
- d) Administrative capacity to complete the project;
- e) Successful experience in completing prior **LIHTC** projects in Texas through the **TDHCA**'s issuance of IRS Form 8609s for the project; and
- f) The management entity that is proposed, if any, must have previous experience with managing **LHTC** projects 100 units or more.
- g) Development in high opportunity, non-impacted census tracts, etc.

The developer partner can be headed by a non-profit community-based developer or a for-profit developer, or be a joint venture. The new project construction developer's team should include (1) an experienced developer of multi-family housing (or developer consultant providing technical assistance in building or strengthening capacity of the developer); (2) a licensed general contractor with demonstrated financial capability; (3) a registered architect with multifamily residential design experience, and (4) a management agent with experience in

managing multi-family rental complexes. The developer may perform any of these functions, if qualified. The **HCHA** reserves the right to accept or reject individual members of the development team. To the extent that any of the indicated members of the development team are not identified in the proposal, the **HCHA** reserves the right to require that the developer comply with **HUD** procurement regulations in connection with subsequent identification of such team members.

B. Proposal Requirements

The Developer, i.e., the Respondent, is required to submit the following information, although the **HCHA** reserves the right to request additional information upon review of initial submissions:

1. Structure of the Team

All entities that comprise the team are to be identified, indicating their specialization(s) and specific contribution to the team. Respondents are encouraged to include on the team specialists for all components of the program including design, construction, financing, and management services. The form of relationship between participants should be designed to meet the needs of the team and the program; however, the team leader should be clearly identified. Ultimately, the identified team leader will be held responsible for the performance of all members of the team. If the team members are unrelated parties, the team leader should enter into individual agreements with each member to assure performance, and copies of such agreements shall be provided in the proposal. Respondents must submit an organization chart showing all of the individuals that will be assigned to this program. Also, resumes of the key individuals are to be included with a detailed description of the responsibilities that they will be required to perform. The **HCHA** is interested in assessing the capacity and capability of teams and their ability to respond to the demands of this initiative. Additionally, the **HCHA** will assess the capability of the project manager, the lead individuals in each discipline, and the team.

2. Experience of Team Members

Descriptions of relevant experience should be provided for each member of the team. Additionally, any previous collaboration among some or all members of the team should be noted. Successful experience in the development and operation of similar projects to the one proposed for this **RFP** will be favored. Likewise, experience in housing development efforts with resident and community participation will be favored.

3. References

Respondents must submit at least 5 references for the team leader and 3 references for each of the other major team participants.

4. M/WBE Participation

The Respondent must submit information showing the composition of the team, clearly indicating where, and to what extent, minority and female business enterprises are to be utilized. The **HCHA** has established 30 percent **M/WBE** participation as a goal. In addition, all proposals shall include a completed minority business enterprise form (attached to this **RFP** as Attachment C).

5. Financial Statement

Current financial statements of the developer and the team leader (if other than the developer) of the proposing team must be submitted. These statements should demonstrate the financial capacity of the developer, or the entity that would most likely be responsible for executing all applicable guarantees. Financial statements may be submitted in a separate, sealed envelope (one copy only) marked “Financial Statements – Confidential.”

6. Project Design, operation of and Location

In a narrative and diagrammatic presentation, Respondents should provide a detailed description of the proposed project(s) including tenant amenities and any other relevant information. The **HCHA** is requesting that the team submit architectural designs and construction documents and specifications that are at least 90+% complete. A legal description and street address of the proposed project site must also be included.

It is recognized that the selected developer is responsible for the financial success of the development, its operation and the developer is expected to propose accordingly. The **HCHA** is interested in facilitating the development of and/or acquisition of a successful rental housing project. Thus, design concepts are expected to respond to the need to produce an economically viable product. A construction budget must also be provided.

7. Financing Plan

Respondents must submit a “Sources and Uses of Funds” and a general “Development and Operating Proforma” that presents the primary elements of the development and operating costs, as well as the necessary operating projections for the development. It is understood that these are estimates. For the estimate, the Respondent should assume that the development will be exempt from ad valorem taxes after the **HCHA**-related entity becomes the general partner. As noted earlier, the development(s) and operation(s) are subject to Davis Bacon wages, Section 3 and M/WBE requirements. The selected Respondent will be expected to refine the financing plan as the development plan, including design and construction budget, is finalized.

The narrative of the financing plan should clearly identify the number and income mix of units to be included in the project and the amount of the **HCHA** resources that are needed, as well as the amount of Low-Income Housing Tax Credits committed to the project and other private resources. A copy of the fully-executed Commitment for Low Income Housing Tax

Credits must be provided, as well as a copy of the fully-executed Carryover Allocation Form, if carryover has been met. The plan should also identify any anticipated cash investment by the Respondent.

The financing plan should include a proforma and a reasonably detailed 15-year spreadsheet showing operating budgets in balance for the duration. The development proforma should show all sources and uses of development funds and reasonably detailed explanation for development costs. The 15-year spreadsheet should show rents or other payments for each distinct type of housing unit. It should also break operating expenses into typical, separate categories. Trending assumptions should be clearly stated and documented. A Year One Operating Budget must be included.

8. Proposed Ownership Structure

The **HCHA** and the selected Respondent will negotiate the specifics of the ownership structure after selection. A **HCHA**-related entity will serve as the general partner of the development partnership. It is anticipated that when the **HCHA**-related entity is admitted to the development partnership as the general partner, an ad valorem tax exemption should apply due to **HCHA**'s ownership of the fee title to the land coupled with control of the development partnership. If the Respondent is comprised of more than one legal entity, the Respondent must identify the various legal entities to be involved in the ownership of the improvements and the nature of their involvement. With respect to the development entity and/or the management agent, a precise description of any joint venture arrangements, including respective equity and decision making interests shall be provided.

9. Proposed Fee Structure

Respondents should submit a proposed fee structure as appropriate, including a proposed split of the developer fee and cash flow with the **HCHA**, based upon the **HCHA**'s role as set out in Section 4.0(C) above. The proposed fees should include the amount and timing of payment(s). To assist the Respondent in addressing these issues, the **HCHA** has attached as Attachment A to this **RFP** a form of Sample Memorandum of Understanding that the **HCHA** will use as a starting point for negotiations with the selected developer(s). While all terms of the Memorandum of Understanding are negotiable, the **HCHA** has included the Sample Memorandum of Understanding to provide an indication of the **HCHA**'s initial negotiation position.

10. Property Management Plan

The **HCHA** is deeply committed to excellent professional property management for the proposed project over the long term. The Respondent should identify an existing firm to carry out the property management of the development that has an excellent reputation and experience in the management of multifamily rental housing. The **HCHA** reserves the right to approve or disapprove the proposed management entity and to request additional managers.

Please describe the persons who will manage the properties and supply a detailed resume of the firm which will be responsible for property management. Also submit a written management plan.

11. Development Schedule

Respondents shall submit a Development and/or Acquisition Schedule that addresses the requisite activities for the transaction and provides a time line for the process, indicating key assumptions and milestones.

12. Community Participation

Respondent should discuss how it would envision giving the community input as the new construction development concept is finalized. Please provide a description of efforts that will be made to keep the community informed during the new construction development process and during the ongoing operation of the project.

13. Section 3 Participation

Pursuant to Section 3 of the **HUD** Act of 1968, if additional job training, employment, and other economic opportunities are generated by this initiative, then to the greatest extent feasible, these opportunities must be directed to low-income and very low-income persons. In addition to employment and training opportunities, Section 3 also seeks to benefit businesses owned by public housing residents and other low-income persons.

The **HCHA** has a strong commitment to the Section 3 program policy. Respondents should discuss how the project will accommodate **HUD** "Section 3" program requirements for the employment of and the utilization of businesses owned and operated by low-income persons.

14. Required Certifications and Affidavits

Respondents must complete and submit the following forms, all of which are included herein.

- Attachment B: Form of Non-Collusive Affidavit
- Attachment C: **M/WBE** Participation
- Attachment E: Form **HUD-5369-C**, Certifications and Representations of Offerors
- Attachment G: Conflict of Interest Questionnaire (**CIQ**)
- Attachment H: Section 3 Certification and Plan
- Declaration (Required Submittal)

C. Evaluation Process and Selection Criteria

Proposals will be evaluated by a **HCHA** selection committee. The selection committee will be advised by consultants and attorneys already retained by the **HCHA**. The selection committee will present its recommendations to the **HCHA** Board of Commissioners who will make the final selection.

Proposals will be evaluated using the Developer Evaluation Criteria outlined below. After the initial scoring of proposals, those deemed by the committee to be within the competitive range may, at the **HCHA**'s option, be asked for a telephone or personal interview to clarify issues and, if necessary, following the interview, to submit "best and final" offers.

After the interviews and the receipt of any best and final offers, each of those Respondents will be reevaluated and rescored. The **HCHA** reserves the right to conduct negotiations with more than one of the finalist Respondents. Selection of a proposal does not constitute **HCHA**'s approval of a design. One or more Respondents with the highest overall scores, whose proposals are most advantageous to the **HCHA** considering price, technical and other factors, as specified in this **RFP**, will be selected as development partner(s) of choice.

The **HCHA** reserves the right to accept or reject individual members of each proposed development team or assemble a separate team from members of different teams.

The **HCHA** reserves the right to accept or reject in part, or reject all proposals and to re-solicit new proposals. The **HCHA** may also reject any proposals that are incomplete or non-responsive and any proposals that are submitted after the deadline.

Proposal Evaluation Criteria

In evaluating the submitted proposals, the **HCHA** will consider the following criteria:

- | | |
|-----------|---|
| 20 Points | 1. <i>Experience and Qualifications.</i> The experience, qualifications, and financial capability of the development team as partially evidenced by the timely and successful completion of similar projects involving multi-family rental housing developments, tax-exempt Bond proceeds, CDBG-DR Funds and Low Income Housing Tax Credits. Reference checks will provide affirmation of the Respondent's competence with respect to the development and management of such projects. |
| 20 Points | 2. <i>Feasibility.</i> The feasibility of the proposal as evidenced by a well-considered, achievable financial structure and a reasonable series of development and operating cost assumptions with an emphasis on containment of per unit total development costs. Feasibility is also measured by the degree to which a project is ready to start construction in the case of new construction. |
| 15 Points | 3. <i>Leveraging of HCHA Funds.</i> Preference will be given to projects that minimize the amount of HCHA funds required on a per unit basis and maximize the leveraging of additional resources. |

- 25 Points 4. ***Development Concept and Plan.*** The degree to which the plans meet the criteria set forth in the **TDHCA** 2014 Qualified Allocation Plan and/or the CDBG-DR Program, enhancing the likelihood of receiving a Tax Credit allocation and/or DR Funding. Familiarity with neighborhood conditions, community participation processes is important, location in non-impacted census tracts and High Opportunity Areas as defined by the CDBG-DR Program. The attractiveness of the site location will be considered under this criteria.
- 15 Points 5. ***Fee Structuring and Timing.*** The reasonableness of the fees and timing of receipt of such fees for the various team members will be evaluated.
- 5 Points 6. ***Section 3 Participation.*** Section 3 Plan and the Respondent's experience in developing and implementing Section 3 plans will be considered.

Total Possible Points – 100

Bonus Points: 15 total points possible

Proposals may receive an additional 5 bonus points for sites zoned to one or more Public Elementary School(s) rated "B" or higher by the most recent annual school rankings published by Children at Risk (www.childrenatrisk.org).

Proposals may receive an additional 5 bonus points for sites zoned to one or more Public Middle School(s) rated "B" or higher by the most recent annual school rankings published by Children at Risk (www.childrenatrisk.org).

Proposals may receive an additional 5 bonus points for sites zoned to one or more Public High School(s) rated "B" or higher by the most recent annual school rankings published by Children at Risk (www.childrenatrisk.org).

6.0 SUBMISSION PROCESS AND CONDITIONS

A. Pre-Proposal Conference

A Pre-Proposal Conference will be held at 10:00 A.M. CST on September 5, 2014, in the HCHA Board Room, 2nd Floor, 8933 Interchange, Houston, Texas 77054.

Following the Pre-Proposal Conference, the **HCHA** will allow until 5:00 P.M. CST on September 9, 2014, to submit questions. The request must be addressed to Horace Allison, AIA,

Chief Development Officer, at the address and location contained herein. Submit questions to Horace Allison, AIA, Chief Development Officer, 8933 Interchange, Houston, Texas 77054 or email to horace.allison@hchatexas.org. Any information provided to a prospective Offeror about this solicitation will be furnished to all other prospective Offerors as a written amendment to the solicitation.

In order to maintain a fair and impartial competitive process, the **HCHA** can answer questions only at the pre-proposal conference and in response to written questions received within the specified timeframe. The **HCHA** must avoid private communication with the prospective Respondents during the evaluation period. This pre-proposal conference and the written questions will be the only opportunities for Respondents to ask questions as to form and content. Please respect this policy and do not attempt to query the **HCHA** personnel regarding this **RFP** except during the pre-submission conference.

Answers to questions which the **HCHA** deems to relate to proprietary information and/or unique design, legal or financing strategies will be kept confidential. Otherwise, any responses made by the **HCHA** will be forwarded to all Respondents by September 12, 2014.

B. Submission Package

An original and three (4) copies (a total of four) of the complete submission package must be received by the HCHA, Attn: Horace Allison, AIA, Chief Development Officer by 4:00 P.M. CST on September 23, 2014. The original and all copies of the submission package must be submitted in a sealed envelope and addressed to Horace Allison, AIA, Chief Development Officer, Harris County Housing Authority, 8933 Interchange, Houston, Texas 77054. On the outside of the envelope should be the Respondent's name and address, phone number, the due date of September 23, 2014 and the RFP title "Request for Proposals for Developers of Multi-Family Housing – Private Activity Bond & 4% Low-Income Housing Tax Credit Projects and/or 9% Low Income Housing Tax Credit Projects." The submission package must be signed by an officer of the Respondent who is legally authorized to enter into a contractual relationship in the name of the Respondent. In the absence of a corporate seal, the submission package must be notarized by a Notary Public.

C. Withdrawal of Proposals

Proposals may **not** be withdrawn for ninety (90) days from the submission deadline date.

D. Mistakes in Proposals

If a mistake in a proposal is suspected or alleged, the proposal may be corrected or withdrawn during any negotiations that are held. If negotiations are not held, or if best and final offers have

been received, the Respondent may be permitted to correct a mistake in its proposal and the intended correct offer may be considered based on the conditions that follow:

1. The mistake and the intended correct offer are clearly evident on the face of the proposal.
2. The Respondent submits written evidence that clearly and convincingly demonstrates both the existing offer and such correction would not be contrary to the fair and equal treatment of other Respondents.

Mistakes after award shall not be corrected unless the **HCHA** Counsel makes a written determination that it would be disadvantageous to the **HCHA** not to allow the mistake to be corrected. The approval or disapproval of requests of this nature shall be in writing by the **HCHA** Counsel.

E. Conflict of Interest

The development team warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest. Conflict of interest is defined as a situation in which the nature of work under this contract and the Respondent's organizational, financial, contractual or other interests are such that:

1. Award of the contract may result in an unfair competitive advantage.
2. The Respondent's objectivity in performing the contract work may be impaired. In the event the Respondent has an organizational conflict of interest as defined herein, the Respondent shall disclose such conflict of interest fully in the proposal submission.
3. The Respondent agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the Chief Executive Officer which shall include a description of the action which the Respondent has taken or intends to take to eliminate or neutralize the conflict. The **HCHA** may, however, terminate the contract if it is in its best interest.
4. In the event the Respondent was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Chief Executive Officer, the **HCHA** may terminate the contract for default.
5. The provisions 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 Respondent. The Respondent shall include in such subcontracts and

consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

6. No member of or delegate to the U.S. Congress or Resident Commissioner shall be allowed to any share or part of this contract or to any benefit to arise. This provision shall be construed to extend to this contract if made with a corporation for its general benefit.
7. No member, officer, or employee of the **HCHA**, no member of the governing body of the locality in which the project is situated, no member of the governing body in which the **HCHA** was activate, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year there after, have any interest, direct or indirect, in this contract or the proceeds thereof.
8. The **HCHA** reserves total discretion to determine the proper treatment of any conflict of interest disclosed under this provision.

F. Incurred Costs in Preparing Proposals

Respondent will be responsible for all costs incurred in preparing a response to this **RFP**. All material and documents submitted by prospective development teams will become the property of the **HCHA** and will not be returned. Any developer selected for further negotiations, as well as a developer ultimately selected to enter into a contractual agreement with the **HCHA**, will be responsible for all costs incurred by it during negotiations.

G. Contract/Award

A contract shall be awarded in accordance with the terms and conditions of this **RFP** to the one or more Respondent(s) whose proposal(s) are most advantageous to the **HCHA** considering price, technical and other factors as specified in this **RFP**. The **HCHA** reserves the right to negotiate and award any element of this **RFP**, to reject any or all proposals or to waive any minor irregularities or technicalities in proposals received as the best interest of the **HCHA** may require.

7.0 CONFIDENTIALITY OF PROPOSALS

There will be no public opening of proposals. All proposals and information concerning same shall remain confidential until all negotiations are completed and the Notice of Award is issued. Offerors are hereby notified that all proposals received by **HCHA** shall be included as part of the official contract file. Therefore, any part of the proposals that is not considered confidential, privileged or proprietary under any applicable Federal, State or local law shall be available for

public inspection upon completion of the procurement process. Any material submitted by the Offeror that is to be considered as confidential must be clearly marked as such; however, the applicable provisions of Federal, State and local laws shall govern the confidentiality of proposals despite anything contrary to this provision stated in the proposal.

8.0 AVAILABILITY OF RECORDS

The U. S. Department of Housing and Urban Development, the U.S. Government Accounting Office, the **HCHA**, the General Land Office and any duly authorized representatives of each, shall have access to, and the right to examine any and all pertinent books, records, documents, invoices, papers, and the like, of the firm(s) office or firm, which shall relate to the performance of the services to be provided.

9.0 MINORITY/WOMEN BUSINESS PARTICIPATION

The firm(s) awarded the contract agrees to use its best efforts to subcontract with minority business enterprises and/or women business enterprises, certified as such or recognized by the **HCHA** as such. The Offeror shall make a good faith effort to subcontract a sufficient dollar amount with **MBE/WBE** firms or attorneys to ensure the final contract dollars are expended on one or more **MBE/WBEs**. All adjustments to increase the contract will also increase the total amount that the Offeror must make a good faith effort to expend on **MBE/WBEs**.

USING BEST EFFORTS TO FULFILL MBE/WBE REQUIREMENTS

In the event **HCHA** has a reasonable belief that the Offeror will not use its best efforts to meet the 30 percent (30%) **MBE/WBE** participation goal, **HCHA** reserves the right to pull work from the contract. Best efforts may be established by showing the Offeror has contracted and solicited bids/quotes from subcontractors in identifying **MBE/WBEs**.

10.0 PERTINENT FEDERAL REGULATIONS WITH REGARD TO NONDISCRIMINATION AND EQUAL OPPORTUNITY

The offeror must comply with the following:

The requirements of Title VIII of the Civil Rights Act of 1968 and Title VI of the Civil Rights Act of 1964, relating to prohibitions against discrimination in housing and the benefits of federally funded programs because of race, color, religion, sex or national origin must be met by the Offeror.

Regulations prohibiting discrimination on the basis of age under the Age Discrimination Act of 1975

Regulations that prohibit discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990.

The requirements of Executive Order 11246, relating to equal employment opportunity in connection with federally funded programs must be met by the Offeror.

The requirements of Executive Orders 11625, 12432, and 12138 relating to the use of minority and women's business enterprises in connection with federally funded programs.

11.0 INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD THE HCHA AND ITS OFFICERS, AGENTS AND EMPLOYEES (THE "INDEMNIFIED PERSONS") HARMLESS FROM ALL LIABILITY, LOSS OR DAMAGE, INCLUDING, ATTORNEY FEES AND EXPENSES, RESULTING FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER ASSERTED BY ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE INDEMNIFIED PERSONS' OR CONTRACTOR'S EMPLOYEES), FOR PERSONAL INJURY, DEATH, OR FOR LOSS OF OR DAMAGE TO ANY AND ALL PROPERTY IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH CONTRACTOR'S PERFORMANCE HEREUNDER.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, CONTRACTOR INDEMNIFICATION OF THE INDEMNIFIED PERSONS IS LIMITED TO \$1,000,000 PER OCCURRENCE.

THE HCHA SHALL NOTIFY CONTRACTOR OF ANY CLAIM THE HCHA RECEIVES NOTICE OF ASSERTED AGAINST THE INDEMNIFIED PERSONS WITH RESPECT TO WHICH INDEMNIFIED PERSONS ARE INDEMNIFIED AGAINST LOSS BY CONTRACTORS HEREUNDER WITHIN FIFTEEN (15) DAYS OF THE HCHA'S RECEIPT OF NOTICE OF SUCH CLAIM, AND SHALL PROMPTLY DELIVER TO CONTRACTOR THE ORIGINAL OR A TRUE COPY OF ANY SUMMONS OR OTHER PROCESS, PLEADING, OR NOTICE ISSUED OR SERVED IN ANY SUIT OR OTHER PROCEEDING TO ASSERT OR ENFORCE ANY SUCH CLAIM. IF THE AUTHORITY OR ANY OF THE INDEMNIFIED PERSONS DO NOT PROVIDE THIS NOTICE WITHIN THE FIFTEEN (15) DAY PERIOD, IT DOES NOT WAIVE ANY RIGHT TO INDEMNIFICATION EXCEPT TO THE EXTENT THAT CONTRACTOR IS PREJUDICED, SUFFERS LOSS, OR INCURS EXPENSE BECAUSE OF THE DELAY.

FOLLOWING SUCH NOTIFICATION, AND EXCEPT AS OTHERWISE PROVIDED BELOW, CONTRACTOR SHALL DEFEND ANY SUCH SUIT AT ITS SOLE COST AND EXPENSE WITH ATTORNEYS OF ITS OWN SELECTION WHO ARE REASONABLY SATISFACTORY TO THE AUTHORITY.

CONTRACTOR SHALL CONTROL THE DEFENSE AND ANY NEGOTIATIONS TO SETTLE THE CLAIM, BUT THE INDEMNIFIED PERSONS SHALL HAVE THE RIGHT, IF THEY SEE FIT, TO PARTICIPATE IN SUCH DEFENSE AT THEIR OWN EXPENSE. CONTRACTOR SHALL HAVE THE POWER TO SETTLE THE CLAIM WITHOUT THE CONSENT OR AGREEMENT OF THE AUTHORITY UNLESS THE

SETTLEMENT WOULD (I) RESULT IN INJUNCTIVE RELIEF OR OTHER EQUITABLE REMEDIES OR OTHERWISE REQUIRE THE INDEMNIFIED PERSONS TO COMPLY WITH RESTRICTIONS OR LIMITATIONS THAT WOULD ADVERSELY AFFECT THE INDEMNIFIED PERSONS, (II) REQUIRE THE INDEMNIFIED PERSONS TO PAY AMOUNTS THAT CONTRACTOR DOES NOT FUND IN FULL, (III) NOT RESULT IN THE INDEMNIFIED PERSONS' FULL AND COMPLETE RELEASE FROM ALL LIABILITY TO THE CLAIMANTS OR OTHER PARTIES THAT ARE PARTIES TO OR ARE OTHERWISE BOUND BY THE SETTLEMENT OR (IV) ESTABLISH A PRECEDENT(S) WHICH THE INDEMNIFIED PERSONS, IN THEIR SOLE DISCRETION INDIVIDUALLY OR IN THEIR COLLECTIVE DISCRETION AS A GROUP, DETERMINES IS NOT IN THE BEST INTEREST OF THE INDEMNIFIED PERSONS.

IF CONTRACTOR NOTIFIES THE HCHA IN WRITING WITHIN TEN (10) DAYS AFTER RECEIPT OF THE HCHA'S WRITTEN NOTICE OF A CLAIM AND REQUEST FOR INDEMNIFICATION THAT IT ELECTS NOT TO DEFEND THE CLAIM, THE HCHA OR ANY OF THE INDEMNIFIED PERSONS SHALL ASSUME AND CONTROL THE DEFENSE AND ALL DEFENSE EXPENSES SHALL CONSTITUTE AN INDEMNIFICATION LOSS.

12.0 AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS

41 CFR 60-741.4

41 CFR 60-250.4

(a) The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection of training, including apprenticeship.

(b) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(c) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(d) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

(e) The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract or other understanding, that the Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

(f) The Contractor will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontract or vendor. The Contractor will take such action with request to any subcontract or purchase orders as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

The Contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam Era in regard to any position for which the employee or applicant for employment is qualified.

The Contractor shall comply with the affirmative action clause prescribe in 41 C.F.R. Section 60-250.4(a) through (m) and the regulations contained in part 60-250.

13.0 **DECLARATION – (REQUIRED SUBMITTAL)**

NAME

TITLE

CITY, STATE

SUBMITTAL DATE

The undersigned, as Offeror, declares that the only persons interested in this Response are named herein, that no other person has any interest in this proposal, that this proposal is made without connection or arrangement with any other person, and that this proposal is in every respect fair, in good faith, and without collusion or fraud.

The Offeror further declares that he/she has complied in every respect with all of the instructions of Offerors, and has read all addenda, if any, has satisfied himself or herself fully relative to all matters and conditions with respect to the proposal.

The Offeror agrees, if this proposal is accepted, to execute such agreement as appropriate for the purpose of establishing a formal contractual relationship between the Offeror and the **HCHA** for the performance of all requirements to which the proposal pertains.

The Offeror states that this proposal is based upon the proposal documents and amendments, if any.

Persons Interested in this Response:

Name	Identity of Interest
------	----------------------

1.

2.

3.

NAME OF FIRM/INDIVIDUAL/CORPORATION

SIGNATURE

TITLE

ATTACHMENT A

[The following Sample Memorandum of Understanding is provided to indicate the type of initial understanding that a Respondent must enter into not later than October 8, 2014 in order to be included in this program. The specific terms contained in the Sample Memorandum of Understanding are all subject to negotiation, but provide an indication of the terms upon which the HCHA will initiate negotiations.

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE HARRIS COUNTY HCHA
AND**

This Memorandum of Understanding ("MOU") is between The Harris County Housing Authority ("HCHA"), a Texas municipal Housing Authority, and _____ ("Developer"), a Texas _____, and is dated effective as of _____, 2014.

Developer is a developer of affordable housing in the State of Texas. The HCHA is a local tax-exempt governmental entity whose mission is to provide safe, decent and sanitary housing for low-income persons and to manage resources efficiently and effectively. The HCHA has a current need for additional affordable housing for low-income families. Developer and the HCHA hereby agree to work cooperatively to develop and/or transfer the GP Interest of an affordable housing project at the following location, which is within Harris County but outside the City Limits of Houston, Texas, or its extra-territorial jurisdiction, in accordance with the terms of this MOU:

_____ Apartments, being a ____-unit _____ development to be located at
_____, Houston, Texas _____ (the "Project").

In order to accomplish this purpose, the parties agree as follows:

AGREEMENTS:

A. Ownership Structure.

1. Developer has previously formed _____, a Texas limited partnership (the "Partnership") for the purpose of owning the Project. The sole general partner of the Partnership is currently _____ ("Old GP"), which owns 0.01% of the Partnership. Upon closing of the bond, equity, and construction loan, the Old GP shall transfer its general partner interest in the Partnership to a non-profit affiliate of the HCHA ("New GP") for the sum of Ten Dollars (\$10.00) total consideration. The New GP shall have sole responsibility for the management of the Partnership.

2. Title to the land for the Project shall be taken in HCHA, and HCHA shall then enter into a 99-year Ground Lease with the Partnership as tenant. Funding for the acquisition of the land will come from the financing of the Project, and shall be paid to the HCHA in the form of an up-front Ground Lease payment. In addition to the up-front rental payment, the Ground Lease shall provide for a nominal annual rental that shall be deferred so long as the land is used for affordable housing purposes and _____ (____) of the units in the Project are designated and maintained as public housing units. Upon termination of the Ground Lease, ownership of the improvements constituting the Project shall revert to

the **HCHA**. The terms and conditions of the Ground Lease shall be subject to the approval of the Developer, which approval shall not be unreasonably withheld, delayed or conditioned. The **HCHA** will receive a right of first refusal to acquire the Project at the end of the compliance period for the statutory minimum price.

3. After execution of this **MOU**, the parties agree to negotiate and enter into a Development Agreement for the Project by and among the Partnership, the **HCHA** and the Developer. The Development Agreement will cover all aspects of the development of the Project, but will follow this **MOU** as the essential guide.

B. Financing.

1. Bond Counsel will prepare a bond Inducement Resolution for the **HCHA** by _____, 2014. All costs and fees incurred by the Developer in obtaining an Inducement Resolution shall be reimbursed at closing out of the bond proceeds. The **HCHA** will apply to the **TBRB** for a Bond Reservation by _____, 2014.

2. Within fourteen (14) days of receipt of an Inducement Resolution from the **HCHA**, Developer will submit a 4% LIHTC application to **TDHCA** for a 20__ commitment for \$_____ per year in 4% **LIHTCs**. All costs and fees incurred by the Developer in obtaining the LIHTC commitment shall be reimbursed at closing out of the equity contribution.

3. In consideration of the designation of _____ (__) of the units in the Project as CDBG-DR units, **HCHA** (acting through its public finance corporation) shall commit to provide up to \$_____ in financing for the Project, subject to the **GLO's** approval of the proposed loan. This loan commitment shall be evidenced by a commitment letter providing for a 45-year loan with interest accruing at the Applicable Federal Rate, payable at maturity. The loan will be secured with a secondary deed of trust lien upon the Partnership's leasehold estate and the improvements constituting the Project.

4. Developer shall be responsible for negotiating additional financing of the Project on behalf of the Partnership, provided that **HCHA** shall have the right to approve the identity of any lender, and the right to review and approve the financing arrangements and the terms and conditions of any loan documents. Financing may be secured with a deed of trust lien against the leasehold estate created by the Ground Lease, but not against the fee of the land for the Project. Income generated from the public housing units, if any, may only be used to pay operating expenses, and may not be used for debt service.

5. The Developer shall be responsible for locating potential purchasers of the 4% **LIHTCs** generated by the Project pursuant to applicable **HUD** procurement requirements. The **HCHA** shall have the right to negotiate the sale of the **LIHTCs** and the terms and conditions of the Partnership Agreement. Developer shall counsel **HCHA** and provide assistance to **HCHA** in connection with the sale of the 4% **LIHTCs**.

6. Developer shall provide any guarantees of financing and operating expenses that may be required either (i) by lenders, or (ii) by limited partners.

7. Developer shall prepare construction and operating budgets for the Project, subject to consultation with the **HCHA** and the **HCHA's** written approval.

C. Design and Construction.

1. Developer shall be responsible for obtaining the services of design professionals for the design of the site plan and the proposed improvements for the Project. The design of the Project shall be subject to **HUD**, **TDHCA** and **CDBG-DR Programs** requirements and **HCHA's** review, comment and approval, which approval shall not be unreasonably withheld or delayed. The **HCHA** shall additionally have the right to review and comment upon the design and construction documents and specifications for the Project, and such design and construction documents and specifications must be approved by the **HCHA** prior to the Partnership entering into a construction contract.

2. Developer shall be responsible for negotiating one or more construction contracts for the construction of the site improvements for the Project, provided, however, that Developer shall follow any procurement procedure which may be required by **HUD** and **HCHA**. The **HCHA** shall have the right to review and approve in writing any construction contract relating to the Project prior to the execution thereof. Construction will be subject to Davis Bacon wage rates.

3. Developer shall be responsible for the development of the Project, including obtaining all governmental approvals and permits needed in order to construct and operate the Project.

4. Developer shall guarantee to the Partnership, the limited partners and any lenders, as required, delivery of the Project on time and within the budget.

D. Management and Operation.

1. Developer or its designee shall have the right to initially manage the Project on a day-to-day basis, subject to entering into a management agreement with the Partnership on terms and conditions customary in the industry and acceptable to the **HCHA**, the lenders, the limited partners and the general partner.

E. Social Services.

The **HCHA** shall be responsible for the approval of a service provider to coordinate, provide and monitor social services for the residents of the Project during the **LIHTC** compliance period. .

F. Community Support.

The **HCHA** and the Developer shall be jointly responsible for interfacing with the community and obtaining community support for the Project. The **HCHA** and Developer will consult with each other and coordinate the response to any public opposition to the Project that may arise.

G. Fees and Expenses.

1. Developer shall be entitled to receive a developer's fee for its development of the Project, subject to **TDHCA** and **HUD** limitations. Developer will pay ___% of the developer's fee, as and when received, to **HCHA** in consideration of **HCHA's** assistance in the development of the Project. To the extent that any portion of the developer's fee is deferred, such deferral shall be prorata to Developer and **HCHA**. Any budgetary overruns shall be deducted from the Developer's ___% of the entire developer's fee if they cannot be otherwise accommodated within the approved development budget. A deduction from the Developer's ___% of the developer's fee for budgetary overruns shall neither reduce nor delay payment to **HCHA** of its ___% of the developer's fee. At least 80% of the developer's fee shall be held back until stabilization, which for the purpose of this **MOU** shall be a 1.20 for a period of six (6) consecutive months. Once the developer's fee is paid, all residual income from the Project shall be paid to the general partner, or as otherwise negotiated with the **LIHTC** investor and approved by **HCHA**.

2. The general contractor for the Project shall be entitled to receive a general contractor's fee for the Project, subject to (i) **TDHCA's** limitations, (ii) any third party contractor's right to receive such fees, and (iii) **HUD** approval.

3. Effective upon transfer of the general partner interest in the partnership to the **HCHA** affiliate as the New GP, such New GP shall be entitled to receive any partnership administration fee, asset management fee and compliance oversight fee payable pursuant to the amended and restated agreement of limited partnership.

4. All cash flow attributable to the general partner's interest shall be paid to the New GP, effective upon transfer of the general partner interest in the partnership to the **HCHA** affiliate as the New GP. The Developer shall not be entitled to receive any cash flow or proceeds from sale or refinance of the Project.

5. Neither party shall enter into any contractual relationship or agreement relating to the Project that would cause either financial or legal liability to the other, without the other party's prior written consent.

6. All reasonable legal fees and expenses incurred by **HCHA** for the Project in reliance upon this **MOU** shall be paid at the time of the construction loan closing for the Project. Developer acknowledges that Coats | Rose, **HCHA's** attorneys, only represent **HCHA's** interests, and not Developer's interests, in connection with this **MOU**. Coats | Rose, shall serve as partnership counsel. **HCHA** acknowledges that Developer has an interest in reviewing and approving the terms and provisions of the amended and restated agreement of limited partnership, and therefore will have their counsel review such document and consult with **HCHA's** counsel.

H. Miscellaneous.

1. The venue of any disputes between the parties shall be in Houston, Harris County, Texas.

2. This **MOU** reflects the entire understanding between the parties and may only be amended in writing, signed by both parties.

3. **HCHA** has the right to terminate this **MOU** at any time, in its sole discretion, by written notice to Developer, provided, however, that in the event of such a termination, the New GP hereunder shall transfer all of its interest in the Partnership to Developer, and its right to receive any fees pursuant to this **MOU** shall terminate. Developer hereby waives any claims it might allege against **HCHA**, its employees, officers, directors, and **HCHA's** affiliated entities, in connection with a termination by **HCHA**. Developer shall have the right to terminate this **MOU** by written notice to **HCHA**. In the event that Developer terminates this **MOU**, **HCHA** shall be entitled to reimbursement for all third party costs incurred to date, including reasonable attorney's fees.

4. The parties hereto are each prohibited from assigning any of its interests, benefits or responsibilities hereunder to any third party or related third party, without the prior written consent of the other party, such consent not to be unreasonably withheld.

5. **DEVELOPER HEREBY INDEMNIFIES AND HOLDS HARMLESS HCHA, ITS EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, AND HCHA'S AFFILIATED ENTITIES, FROM ANY AND ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION, AND ANY AND ALL LOSS, COST, DAMAGE OR EXPENSE, INCLUDING WITHOUT LIMITATION REASONABLE LEGAL FEES, OCCASIONED THEREBY, WHICH ARISE DIRECTLY OR INDIRECTLY OUT OF HCHA'S RESPONSIBILITIES, OR THOSE OF HCHA'S AFFILIATE, UNDER THIS MOU.**

6. **HCHA's** execution of this **MOU** is subject to approval by **HCHA's** Board of Commissioners.

7. For purposes of Paragraph C.1 and Paragraph D.1, in each instance in which **HCHA** or its affiliate has the right to approve or consent to the item set forth in each respective paragraph, such approval or consent shall not be unreasonably withheld, delayed or conditioned, and **HCHA** or its affiliate will have

fifteen (15) business days following receipt of notice of the item requiring approval or consent in which to review the matter and to make comments. If **HCHA** or **HCHA's** affiliate fails within such fifteen (15) business days to approve or consent or make comments with respect to the subject matter in which approval or consent is required, then approval or consent shall be deemed given with respect to such matter. **Any matter requiring HUD approval or HCHA Board approval shall not be subject to the 15 business day approval requirement.**

EXECUTED on the dates hereafter indicated, but to be effective as of the date shown above.

HCHA:

THE HARRIS COUNTY HOUSING AUTHORITY

By: _____

Name: _____

Title: _____

Date: _____

Developer:

By: _____

Name: _____

Title: _____

Date: _____

ATTACHMENT "B"

FORM OF NON-COLLUSIVE AFFIDAVIT

STATE OF TEXAS

COUNTY OF HARRIS

_____, being first duly sworn, deposes and says that he is

(a partner or officer of the firm of, etc.)

the party making the foregoing proposal or bid, that such proposal or bid is genuine and not collusive or sham; that said Offeror has not colluded, conspired, connived or agreed, directly or indirectly, with any manner, directly or indirectly, sought by agreement or collusion, or communication or conference with any person to fix the bid price of affiant or of any other Offeror, or to fix any overhead, profit, or cost element of said bid price, or of that of any other Offeror, or to secure any advantage against

The Harris County Housing Authority

of any person interested in the proposed Contract; and that all statements in said proposal or bid are true.

Signature of Offeror, if Offeror is an Individual

Signature of Offeror, if Offeror is a Partnership

Signature of Officer, if Offeror is a Corporation

Subscribed and sworn to before me this ____ day of _____, 2009

Notary Public

My Commission expires _____

ATTACHMENT “C”

M/WBE PARTICIPATION

M/WBE PARTICIPATION: The Offeror agrees to use his/her best efforts to subcontract with minority business enterprises and/or women business enterprises (herein called **M/WBE**) certified as such or recognized by **HCHA** as a certified **M/WBE**. Offeror shall make a good faith effort to subcontract a sufficient dollar amount with **M/WBEs** to ensure that a minimum of 30 percent of the final contract dollars are expended on one or more **M/WBEs**. All adjustments that cause the contract price to increase will also increase the total amount that Offeror must make a good faith effort to expend on **M/WBEs**.

USING BEST EFFORTS TO FULFILL M/WBE REQUIREMENT: In the event the **HCHA** has a reasonable belief that Offeror will not use his/her/its best efforts to meet the 30 percent **M/WBE** participation goal, **HCHA** reserves the right to pull work from the contract. Best efforts may be established by a showing that Offeror has contacted and solicited bids/quotes from subcontractors and worked with the **HCHA** to seek assistance in identifying **M/WBEs**.

NOTIFICATION OF M/WBE PARTICIPATION: Offeror agrees to promptly complete and return all **M/WBE** Confirmation of Participation and **M/WBE** Confirmation of Payment forms utilized by the **HCHA** to confirm **M/WBE** subcontracting by submitting copies of checks made payable to the respective **M/WBE** subcontractor(s) signed by the Offeror.

OFFEROR

DATE

Note: This form must bear a signature.

Offeror proposes to work with the following MBE/WBE participants:

Percent of
Total Work

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

ATTACHMENT "D"

Form HUD-5369-B, Instructions to Offerors Non-Construction

Instructions to Offerors Non-Construction

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



- 03291 -

1. Preparation of Offers

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

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

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

2. Submission of Offers

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

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

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

3. Amendments to Solicitations

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

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

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

4. Explanation to Prospective Offerors

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

5. Responsibility of Prospective Contractor

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

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

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

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

6. Late Submissions, Modifications, and Withdrawal of Offers

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

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

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

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

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

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

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

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

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

7. Contract Award

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

(b) The HA may

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

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

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

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

8. Service of Protest

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

9. Offer Submission

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

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

[Describe bid or proposal preparation instructions here:]

ATTACHMENT “E”

Form HUD-5369-C, Certifications and Representations of Offerors

Certifications and Representations of Offerors Non-Construction Contract

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

OMB Approval No: 2577-0180 (exp. 7/30/96)

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

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

1. Contingent Fee Representation and Agreement

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

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

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

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

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

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

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

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

(Check the block applicable to you)

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

3. Certificate of Independent Price Determination

(a) The bidder/offers certifies that—

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

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

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

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

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

4. Organizational Conflicts of Interest Certification

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed contract and a prospective contractor's organizational, financial, contractual or other interest are such that:
- (i) Award of the contract may result in an unfair competitive advantage;
 - (ii) The Contractor's objectivity in performing the contract work may be impaired; or
 - (iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.
- (b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract for the convenience of HA if it would be in the best interest of HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this Contract and intentionally did not disclose the conflict to the HA, the HA may terminate the Contract for default.
- (d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

5. Authorized Negotiators (RFPs only)

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

6. Conflict of Interest

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

7. Offeror's Signature

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

Signature & Date:

Typed or Printed Name:

Title:

ATTACHMENT "F"

Form HUD-5370-C1, General Contract Conditions, Non-Construction

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)

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

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

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

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

1. Definitions

The following definitions are applicable to this contract:

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

2. Changes

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

proposal submitted before final payment of the contract.
(d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

- (e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

3. Termination for Convenience and Default

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

4. Examination and Retention of Contractor's Records

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

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

5. Rights in Data (Ownership and Proprietary Interest)

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

6. Energy Efficiency

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

7. Disputes

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

8. Contract Termination; Debarment

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

9. Assignment of Contract

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

10. Certificate and Release

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

11. Organizational Conflicts of Interest

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

12. Inspection and Acceptance

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

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

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

13. Interest of Members of Congress

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

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

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

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

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

(ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

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

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

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

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

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

(iii) Selling activities by independent sales representatives.

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

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

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

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

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

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

16. Equal Employment Opportunity

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

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

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

17. Dissemination or Disclosure of Information

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

18. Contractor's Status

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

19. Other Contractors

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

20. Liens

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

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

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

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

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

22. Procurement of Recovered Materials

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

ATTACHMENT “G”

Conflict of Interest Questionnaire (CIQ)

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of person who has a business relationship with local governmental entity.

2 ☐ Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has employment or business relationship.

Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

☐ Yes

☐ No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐ Yes

☐ No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

☐ Yes

☐ No

D. Describe each employment or business relationship with the local government officer named in this section.

4

Signature of person doing business with the governmental entity

Date

ATTACHMENT “H”

HCHA SECTION 3 POLICY

Harris County Housing Authority
Section 3 Policy

STATEMENT OF PURPOSE

The purpose of Section 3 of the Housing and Urban Development Act of 1968, as amended by Section 915 of the Housing and Community Development Act of 1992, is to "ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed toward low-and very low income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low-and very low-income persons." The 1992 Act sets forth:

- The types of HUD financial assistance, activities, and recipients subject to the requirements of Section 3;
- The specific individuals and business concerns who are the intended beneficiaries of the economic opportunities generated from HUD-assisted activities; and
- The order of priority in which these individuals and business concerns should be recruited and solicited for the employment and other economic opportunities generated from HUD-assisted activities.

The Harris Housing Authority's Section 3 Policy is expressed in this statement, the goal statement, and the preference tiers. Implementation procedures may be amended periodically to insure that the policy requirements are being met or to bring about efficiencies in the implementation of the program based on the practice and experience of running the program.

*Note that supply and delivery contracts are exempted from these Section 3 Policy requirements.

HARRIS COUNTY HOUSING AUTHORITY PREFERENCE TIERS

Harris County Housing Authority's preference is to ensure that as many housing authority residents as possible are employed. In an effort to further that goal, the Authority has created the following preference tier structure. Vendors are asked to comply with Section 3 by first considering Category I, hiring at the site where work is being performed. If the vendor demonstrates to the Authority's satisfaction the inability to hire at the site, the Authority's next preference is for the vendor to hire residents from other Authority properties and/or programs (Category II). If the vendor cannot meet its Section 3 goal in this manner and needs to move to other categories, the vendor must document this inability to comply with the preference.

I. Preference for Section 3 Residents in Training and Employment Opportunities

Category I Train/hire residents from the site where the work is being performed

Category II Train/hire residents of other housing developments and/or programs managed by the housing authority that is expending the covered assistance

Category III Train/hire participants in a HUD Youthbuild-like program being carried out in the metropolitan area or Non-metropolitan County in which the covered assistance is expended

Category IV Train/hire other Section 3 residents

II. Preference for Section 3 Business Concerns in Contracting Opportunities

Category I Businesses

Business concerns that are 51 percent or more owned by residents of the housing development or developments for which the Section 3 covered assistance is expended and whose full-time permanent workforce includes 30 percent of these persons as employees (or 30% of persons who were Section 3 residents within 3 years of their first employment)

Category II Businesses

Business concerns that are 51 percent or more owned by residents of other housing developments or developments managed by the housing authority that is expending the Section 3 covered assistance and whose full-time, permanent workforce includes 30 percent of these persons as employees (or 30% of persons who were Section 3 residents within 3 years of their first employment)

Category III Businesses

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

Category IV Businesses

Business concerns that are 51 percent or more owned by residents of other housing developments or developments managed by the housing authority that is expending the Section 3 covered assistance

Category V Businesses

HUD Youthbuild-like programs being carried out in the metropolitan area in which the Section 3 covered assistance is expended

Category VI Businesses

Business concerns that are 51 percent or more owned by Section 3 residents and:

- i. whose permanent, full-time workforce includes no less than 30 percent Section 3 residents; or
- ii. that subcontract 20 percent or more of the total amount of the contract (including modifications) and subcontracts 25 percent of the subcontracted amount to Section 3 business concerns

Category VII Businesses

Business concerns that are 51 percent or more owned by Section 3 residents

NOTE: For contracts or purchase orders \$100,000 or less, other economic opportunities can be identified without regard for the Harris County Housing Authority's preference requirements.

SECTION 3 COMPLIANCE REQUIREMENTS

Hiring

A. Background

1. The Section 3 regulations provide that recipients, their contractors, and any subcontractors demonstrate compliance by employing Section 3 residents as 5% of the aggregate number of new hires.

2. The Section 3 Regulations, at CFR Part 135, require that in affordable housing programs, compliance efforts shall be directed to provide training and employment opportunities to Section 3 residents in accordance with the HCHA preference tier structure.
3. If a new hire is needed and a Section 3 resident is identified, that Section 3 resident will be required to submit evidence of Section 3 status to the recipient, contractor or subcontractor.
4. The Harris County Housing Authority requires a preference for hiring from the development where work is being performed. However, the Harris County Housing Authority will not require a vendor to hire from the development at the site if:
 - a. A pre-identified list of Section 3 residents from a job site contains no persons qualified to perform the work. Qualified residents from other developments shall then be considered.
 - b. The vendor's workforce is adequate to do the job and no new hiring is needed. In the event that no new hires are needed, vendors must pursue other avenues of compliance as set forth in the Harris County Housing Authority's preference tier structure.

B. Compliance

1. As part of each bid or proposal submitted, the respondent must document their workforce by position. Such information will be re-verified at the commencement of the contract.
2. Vendors will be required to submit documentation in the form of payroll forms submitted weekly that clearly identify the Section 3 hires. The vendor must comply with the Section 3 requirement throughout the life of the contract. Harris County Housing will periodically audit this information. Failure to comply with the weekly submittal of payroll shall result in the delay of payment.
3. Harris County Housing Authority residents by virtue of their income are Section 3 residents. Contractors employing Harris County Housing Authority residents must retain documentation that demonstrates any Harris County Housing Authority residents hired to meet Section 3 employment goals are:
 - a. identified on the lease of household, that is lease compliant; and
 - b. able to provide to the contractor or subcontractor the client number for the household where Harris County Housing Authority residency is claimed. This client number must appear on the certified payrolls submitted by the vendor to verify a Section 3 hire.
4. Non-Harris County Housing Authority households claiming Section 3 status must be prepared to submit evidence of income and residency in Harris County at the time of hire. As part of the Section 3 compliance process, vendors will be required to document that employees hired meet the residency and income requirements.

Contracting

A. Background

1. The Section 3 Regulations, at 24 CFR Part 135, provide that the Harris County Housing Authority, its contractors and subcontractors may demonstrate compliance by awarding contracts to Section 3 business concerns or to vendors who contract with such firms.
2. Harris County Housing Authority's contracting goals require that Section 3 firms receive at least:
 - a. 10 percent of the total dollar of all Section 3 covered contracts for building trades work for maintenance, repair, modernization or development of public or Indian housing; or
 - b. 10 percent of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and
 - c. 3 percent of the total dollar amount of all other Section 3 covered contracts.
3. Goals apply to the entire amount of Section 3 covered assistance awarded to a recipient in any federal fiscal year (FFY), October 1- September 30. Correspondingly, Harris County Housing Authority's goals shall apply to the total dollar amount of each contract or purchase order.

4. Recipients that award contracts to contractors that will provide training or hiring, must ensure that contractors provide training, employment and contracting opportunities to Section 3 residents and Section 3 business concerns.
5. Efforts shall be directed to award contracts to Section 3 business concerns according to HCHA preference categories.

B. Compliance

1. Business concerns claiming Section 3 status based on ownership and workforce or workforce only (as applicable) must meet that status at the time the bid or proposal is submitted to the Harris County Housing Authority.
2. Anyone claiming to be a Section 3 resident or business concern shall be required, as set forth by procedure, to provide evidence of such status.
3. Pursuant to 24 CFR 135.36 (c) any firm, prime or subcontractor claiming Section 3 status must demonstrate to the Authority's satisfaction that the business concern is responsible and has the ability to complete the work under the terms and conditions of the proposed contract. In evaluating firms under this provision the Authority will examine:
 - a. the work history and prior performance of the firm;
 - b. the requirements of the job verses the skills evidenced by the firm through its owners, officers, principals, and key staff;
 - c. technical and logistical capacity to complete the work considering contracts already awarded to the firm by the Authority or others;
 - d. bonding capacity and ability to obtain required insurance (with allowances for disadvantaged or startup firms);
 - e. evidence of past sanctions imposed by the Authority or others; and
 - f. evidence that the firm, its principals, associates, partners, subcontractors or others have not acted or colluded in order to circumvent the compliance process by structuring contractual or other relationships or engaging in practices designed to comply with Section 3 only to obtain the preference without regard to the work requirements of the job.
4. A business concern need not hire to be considered a Section 3 business provided that:
 - a. the business concern is 51 % or more owned by a Section 3 resident; or
 - b. the business concern's workforce consists of sufficient numbers of Section 3 residents to qualify the vendor as a Section 3 business (30% or more of the full-time workforce consists of Section 3 residents, or persons who were Section 3 residents within 3 years of first employment); or
 - c. the business concern subcontracts 20% or more of the total amount of the contract (including modifications) and in turn subcontracts 25% of the subcontracted amount to Section 3 business concerns (25% of 20%); or
5. After award of a contract, if a business concern must hire to maintain the Section 3 workforce percentage, new hiring efforts must be made in accordance with the Harris County Housing Authority preference tier for hiring (Category I).
6. If a business concern claims Section 3 status by virtue of workforce composition, documentation of the 30% workforce requirement must be submitted to the Authority as part of the response to the bid, quote, or proposal. Further, the firm must maintain the Section 3 workforce percentage throughout the life of the contract. Workforce composition is subject to audit.
7. A business concern (including joint-ventures) seeking to qualify for a Section 3 preference shall certify and submit evidence that they are entitled to the applicable Section 3 preference and that they are a Section 3 business concern as defined in 24 CFR, Part 135 and by the Harris County Housing Authority pursuant to this policy. Prime or subcontractors must submit documentation (including workforce composition data) as part of any bid, quote, or proposal submitted to the Harris County Housing Authority. Additional documentation is required for joint-ventures.

8. Firms that claim Section 3 business status by subcontracting (25% of 20%) of the total contract) to other Section 3 businesses must require that the subcontractor(s) provide ownership or workforce documentation as applicable. The prime contractors must keep such records on file and available for review by the Authority. Such documentation must also be submitted as part of any bid, quote or proposal.
9. Subcontractors identified by any prime contractor claiming Section 3 status per item 6 must be a Section 3 business by ownership and/or workforce as defined in this policy. Subcontractors used by prime contractors to comply with item 6 cannot claim Section 3 status by further subcontracting.
10. Section 3 Joint-Ventures - to meet Section 3 contracting goals the Authority is permitted to contract with an association of firms as least one of which meets the Authority's definition of a Section 3 business concern. A definition of a joint venture is provided in the definition section of this policy. Compliance requirements for joint-ventures are discussed below.
11. Joint-Ventures are subject to the following documentation requirements:
 - a. The joint-venture agreement must be in writing and must be submitted as part of the response to any bid or proposal solicited by the Harris County Housing Authority. In order for the Authority to evaluate the "adequacy" and "capacity", the agreement must describe in sufficient detail the area(s) of work assigned to each member of the joint-venture.
 - b. The joint-venture agreement must reference a completed and fully executed joint-venture certification, as provided by the Authority, which must also be attached to the joint-venture agreement as an exhibit.
 - c. The Harris County Housing Authority requires that the Section 3 joint-venture partner is a bona-fide Section 3 business; therefore, the joint-venture shall provide documentation that shows that the Section 3 partner meets the ownership and workforce, or workforce requirements established in this policy. Section 3 joint-venture partners cannot use subcontracting to establish their status as a Section 3 business concern.
 - d. Section 3 requires that the joint-venture partner be responsible for a clearly defined portion of the work. Proposals or bids must specify the labor hours assigned to and the compensation to be received by the Section 3 joint-venture firm.
 - e. Section 3 firms in the joint-venture must be qualified to perform the scope of work and have the capacity to complete the work assigned under the joint-venture agreement (see item b above).

Bid or Proposal Evaluation

- A. Vendors who fail to address Section 3 requirements will be deemed nonresponsive. This means that in the proposal or bid documents submitted to the Harris County Housing Authority, the Contractor's Affidavit and Compliance commitment must be completed including applicable attachments and supporting documentation to support claims of compliance by hiring, contracting, or other economic opportunities.
- B. After written notice from the Harris County Housing Authority specifying the defects in the Section 3 information, vendors will be given no more than 5 business days to complete the form and provide all required documents. Failure to respond within the 5 days will result in the Authority declaring the bidder or respondent non-responsive. The contract or bid will then be awarded to the next lowest bidder or to the respondent with the next highest score. Where the selection is a qualifications-based procurement, the Harris County Housing Authority will award to the firm that is the next highest ranked.

DEFINITIONS

NEW HIRES- Persons selected to fill full-time, temporary or seasonal employment opportunities.

RESIDENT OWNED BUSINESS (ROB)- A ROB is a business concern owned or controlled by affordable housing residents, that is: (a) at least 51 % owned by one or more affordable housing residents; and (b) whose management and daily business operations are controlled by one or more such individuals. For the purpose of Section 3 compliance, a ROB must also meet the Housing Authority's definitions of a Section 3 business concern as described below.

EMPLOYMENT OPPORTUNITIES GENERATED BY SECTION 3 COVERED ASSISTANCE- All employment opportunities generated by the expenditure of Section 3 covered PIH assistance (i.e. operating assistance, development assistance, and modernization assistance) and with respect to Section 3 covered housing and community development assistance, all employment opportunities arising in connection with Section 3 covered projects, including management and administrative jobs (including architectural, engineering, or related professional services and jobs directly related to administrative support of these activities) connected with the Section 3 covered project.

RECIPIENT- Any entity which receives Section 3 covered assistance, directly from HUD or from another recipient and includes, but is not limited to, any State, unit of local government, PHA, IHA, Indian Tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association. Recipient also includes any successor, assignee, or transferee of any such entity, but does not include any ultimate beneficiary under the HUD program to which Section 3 applies and does not include contractors.

SECTION 3- Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

SECTION 3 BUSINESS CONCERN- As defined by the Harris County Housing Authority, a Section 3 business concern is one:

- A. That is fifty-one (51 %) or more owned by Section 3 residents; or
- B. Whose full-time employees includes persons, at least 30 percent of whom are current Section 3 residents, or were Section 3 residents within three (3) years of the date of first employment with the business concern; or
- C. That provides evidence of a commitment to: (1) subcontract 25 percent or more of the total amount of the contract (including any modification); and (2) in turn subcontracts in excess of 25 percent of the amount from (1) to Section 3 business concerns as defined in A or B (25% of 20%).

Example: If the contract amount is \$1,000,000, vendor must subcontract at least 20% or \$200,000. Of the \$200,000, 25% or \$50,000 must go to Section 3 business concern(s) as defined in A or B.

SECTION 3 CLAUSE- The contract provisions and sanction set forth in 24 CFR 135.8.

SECTION 3 COVERED ACTIVITY- Any activity that is funded by Section 3 covered assistance including Affordable housing assistance.

SECTION 3 COVERED ASSISTANCE- There are no dollar amount thresholds for PIH (Public and Indian Housing) funded Section 3 covered activities. Section 3 applies to all contractors and

subcontractors performing work in connection with the following assistance regardless of the amount of the contract or subcontract:

- Public and Indian housing development assistance provided pursuant to Section 5 of the 1937 Act;
- Public and Indian housing operating assistance provided pursuant to Section 9 of the 1937 Act;
- Public and Indian housing modernization assistance provided pursuant to Section 14 of the 1937 Act;
- Section 8 assistance for work arising in connection with; housing rehabilitation, housing construction, or other public construction projects.

SECTION 3 COVERED CONTRACT- A contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of Section 3 covered assistance or for work arising in connection with a Section 3 covered project. "Section 3 covered contracts" do not include contracts for the purchase of supplies and materials except, whenever a contract for materials includes the installation of the materials, the contract constitutes a "Section 3 covered contract."

SECTION 3 COVERED PROJECT- The construction, reconstruction, conversion, or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction which includes buildings or improvements (regardless of ownership) assisted with housing or community development assistance.

SECTION 3 JOINT VENTURE- An association of business concerns, one of which qualifies as a Section 3 business concern, formed by written joint venture agreement to engage in and carry out a specific business venture for which purpose the business concerns combine their efforts, resources, and skills for joint profit, but not necessarily on a continuing or permanent basis for conducting business generally, and for which the Section 3 business concern:

- Is responsible for a clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and
- Performs at least 25% of the work and is contractually entitled to compensation proportional to its work.

SECTION 3 RESIDENT-

- A. An affordable housing resident or
- B. An individual who resides in Harris County and who meets the following criteria:
 - i. Low-income persons-families (or single persons) whose incomes do not exceed 80 per centum of the median income for the area.
 - ii. Very low-income persons-families (or single persons) whose incomes do not exceed 50 per centum of the median income for the area.