

**CONTRACT FOR CONSTRUCTION SERVICES**

**AGREEMENT BETWEEN THE HOUSING AUTHORITY OF KANSAS CITY, MISSOURI  
AND CONTRACTOR**

**THIS AGREEMENT** made this **XX day of X 2018**

**BETWEEN THE HOUSING AUTHORITY OF KANSAS CITY, MISSOURI** (HAKC), a Missouri Municipal Corporation, principal office located at 920 Main Street, Suite 701, Kansas City, Missouri, 64105

and: XXX

for the following Project: **Contract #XXX**

**XXX Repair at XXX - located at XXX**

HAKC and the Contractor agree as set forth below.

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## Article 1. Definitions

- 1.1 *"Acceptance"* means the issuance of a Certificate of Substantial Completion.
- 1.2 *"Agreement"* and "Contract" mean all items incorporated in Article 49, as component parts of this Contract for Construction Services. The words "Agreement" and "Contract" also include all formal changes made in writing in accordance with the procedures established herein.
- 1.3 *"Architect"* means the architect that may be hired by HAKC to perform the architectural and other services on behalf of HAKC according to the agreement entered into between the architect and HAKC.
- 1.4 *"Calendar Day"* means a twenty-four hour period of time that includes weekdays, weekends and federal holidays.
- 1.5 *"Complete" and "Completion"* shall have the same meaning as the term "Final Completion" except when such terms are modified by the words "partial," or "substantial," or another meaning is undisputedly intended, as evidenced by the context or usage of such terms.
- 1.6 *"Contract Price"* and similar terms (including, but not limited to, Contract Sum and Agreement Price), mean the total sum of money that HAKC agrees to pay, and Contractor agrees to accept as payment, for the performance of this Agreement, pursuant to Paragraph 27.1.
- 1.7 *"Contract Time" and "Contract Period"* means the time required for performance of the Work stated in Article 25, Contract Period.
- 1.8 *"Contracting Officer"* means the person delegated the authority by HAKC to enter into, administer, and/or terminate this contract and designated as such in writing to the Contractor. The term includes any successor Contracting Officer and any duly authorized representative of the Contracting Officer also designated in writing. The Contracting Officer shall be deemed the authorized agent of HAKC in all dealings with the Contractor.
- 1.9 *"Day"* means a Calendar Day.
- 1.10 *"Drawings"* means the graphic and pictorial documents, prepared or approved by HAKC's Project Manager or Architect, if applicable, showing the design, location and dimensions of the Work, generally including plans, elevations, sections details, schedules and diagrams.
- 1.11 *"Final Acceptance"* means the issuance by the Project Manager of the Certificate of Final Completion.
- 1.12 *"Final Completion"* means the condition of the Work on the date the Project Manager issues the Certificate of Final Completion.
- 1.13 *"General Conditions"* means the General Conditions of the Contract for Construction form HUD-5370.
- 1.14 *"HAKC"* means the Housing Authority of Kansas City, Missouri, a Missouri municipal corporation created pursuant to R.S.Mo. § 99.040.
- 1.15 *"HAKC Residents"* means individuals who reside at a housing project owned by HAKC.
- 1.16 *"Minority Business"* means a business which is at least fifty-one percent (51%) owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least fifty-one percent (51%) of the voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority Group members include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.
- 1.17 *"Owner"* means the Housing Authority of Kansas City, Missouri, a Missouri municipal corporation created pursuant to R.S.Mo. § 99.040.
- 1.18 *"PHA/IHA"* means the Housing Authority of Kansas City, Missouri, a Missouri municipal corporation created pursuant to R.S.Mo. § 99.040.
- 1.19 *"Project Manager"* means the person designated by HAKC to monitor and enforce the terms and conditions of the contract documents and exercise such authority as stated in this Agreement.

1.20 "Specifications" means the documents prepared by the HAKC's Project Manager or Architect, if applicable, consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

1.21 "Subcontract" means any contract, purchase order or other agreement, including modifications and Change Orders to the foregoing, entered into by a Subcontractor to furnish supplies, materials, equipment, and services for the performance of this Agreement.

1.22 "Subcontractor" means any supplier, vendor, firm, entity, or individual that furnishes supplies, materials, equipment or services to or for the Contractor or another Subcontractor.

1.23 "Substantially Complete" describes the condition of Work when all the Work, or a portion of the Work designated by the Project Manager, is sufficiently completed in accordance with this Agreement, so that such Work can be utilized for its intended purposes. No Work shall be deemed Substantially Complete until the Contractor satisfies all requirements for demonstration and instruction regarding operation and maintenance procedures with respect to such Work.

1.24 "Women's Business Enterprise" means a business that is at least fifty-one percent (51%) owned by a woman or women who are U.S. citizens and who also control or operate the business.

1.25 "Work" includes all construction and services required by the Specifications, Drawings, and this Agreement, and all component parts listed in Article 49.4.A, whether completed or partially completed, including all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations.

1.26 "Work Day" means any given day in which work occurs.

1.27 "Work Site" means the location designated by the Contracting Officer where the Work is to be performed.

## **Article 2. Contractor's Responsibility for Work**

### **2.1 GENERAL RESPONSIBILITIES**

2.1.A. *Compliance & Business Judgment:* The Contractor shall perform all Work in compliance with this Agreement. The Contractor shall exercise sound business judgment and use its best skill and attention when performing the Work.

2.1.B. *Supervision & Coordination:* The Contractor shall supervise, coordinate and direct the Work. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Agreement, unless expressly stated otherwise in this Agreement.

2.1.C. *Architect & Contracting Officer:* The Contractor shall not be relieved of its obligations to perform the Work in accordance with this Agreement by performance of the duties of the Architect, Contracting Officer or any duly authorized representative of HAKC, or by tests, inspections, approvals or certifications required or performed by persons other than the Contractor. The Contracting Officer may delegate its authority and obligations. The Contractor shall submit to the Contracting Officer and the HAKC's Project Manager or Architect, if applicable, such documentation as requested by the Contracting Officer or the HAKC's Project Manager or Architect, if applicable, to assist in the administration of construction.

2.2 *Employees & Subcontractors:* Contractor shall be responsible for the conduct and discipline of its employees and Subcontractors. All workmen shall have sufficient knowledge, skill, and experience to perform properly the Work assigned to them. Any workman who does not perform his Work in a skillful manner, appears to be incompetent, or acts in a disorderly or intemperate manner, shall be removed from the Work Site by the Contractor's superintendent at the request of the Project Manager or Property Manager if applicable. Such removal is not cause for an extension of time in which to complete the Work.

2.2.A. *No Smoking Policy:* All HAKC sites are 'Smoke Free'. Any workman found smoking on the premises may be removed from the Work Site by the Contractor's superintendent at the request of the Project Manager or Property Manager. Such removal is not cause for an extension of time in which to complete the Work.



## 2.3 *CONTRACTOR'S USE OF THE WORK SITE*

- 2.3.A. *Architect's Instructions:* The Contractor shall limit its use of the Work Site in accordance with the written instructions of the Project Manager and the Architect if applicable. When the Contractor is not performing Work in a particular area of the Work Site, the Contractor shall take reasonable measures, including the removal of equipment and materials, to permit use of such areas by HAKC, HAKC Residents and the public.
- 2.3.B. *Roads, Entrances & Storage:* The Contractor shall not block public roads or entrances to the Work Site. Public roads and entrances to the Work Site shall not be used for storage of materials or parking by the Contractor or Subcontractors.
- 2.3.C. *Material Storage:* The Contractor shall coordinate the Work and deliveries to minimize the amount of materials and equipment stored at the Work Site. The Contractor shall receive, store, and handle products, materials and equipment in a manner which will prevent loss, deterioration and damage.
- 2.3.D. *Vacant Buildings:* The Contractor shall not use existing vacant buildings on the Work Site without prior written consent of the Contracting Officer.
- 2.4 *INDEPENDENT CONTRACTOR:* The Contractor is acting at all times as an independent contractor. Neither the conduct of the parties nor any provision of this Agreement shall create a master-servant relationship between HAKC and the Contractor.

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

*See*, Article 3, General Conditions of the Contract for Construction HUD form 5370.

## **Article 4. Other Contracts**

*See* Article 4, General Conditions of the Contract for Construction HUD form 5370.

## **Article 5. Preconstruction Conference and Notice to Proceed**

*See* Article 5, General Conditions of the Contract for Construction HUD form 5370.

## **Article 6. Construction Progress Schedule, Progress Reports and Progress Meetings**

In the event the contract price meets or exceeds \$100,000.00 Section 6.1, including 6.1.A, 6.1.B, 6.1.C, 6.1.D, and 6.1.E., shall apply.

### 6.1 *CPM PROGRESS SCHEDULE:*

- 6.1.A. *Content of CPM Schedule:* Contractor shall prepare a detailed construction progress schedule covering all aspects of the Work. The construction progress schedule shall employ the Critical Path Method ("CPM") for presentation and analysis of the Work. The CPM Progress Schedule shall:
- (1) provide a detailed, graphic representation of activities and events that will occur during performance of the Work;
  - (2) identify each phase of construction and occupancy;
  - (3) identify dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the Contract Documents;
  - (4) indicate graphically the critical path of Work sequences necessary for completion of related portions of the Work;
  - (5) display the relationship of the Work to other activities, such as scheduled occupancy by HAKC or other contractors' work;
  - (6) establish start dates and completion dates of distinct aspects of the Work;
  - (7) display projected costs of construction activities in a manner consistent with the Contractor's Price Breakdown;

- (8) indicate the estimated percentage of completion of Work activities in ten percent (10%) increments;
- (9) reflect the time required for the preparation and processing of Shop Drawings and submittals;
- (10) reflect the time required for procurement of manufactured or processed materials and equipment;
- (11) reflect time required for inspections and certifications; and,
- (12) additional information requested by the Architect or the Contracting Officer or any duly authorized representative of HAKC.

6.1.B. *Submission & Approval of CPM Schedule:* The Contractor shall submit its proposed CPM Progress Schedule to the Architect, if applicable, and Project Manager within fifteen (15) days after issuance of the Notice to Proceed. After receipt of the proposed CPM Progress Schedule, the Architect, if applicable, and the Project Manager shall either approve the schedule or notify the Contractor of required modifications. If modifications are required, the Contractor shall modify and resubmit the CPM Progress Schedule, in a form satisfactory to the Architect, if applicable, and the Project Manager, within ten (10) days after receiving notice of such modifications.

6.1.C. *Updating CPM Schedule:* The Contractor shall update the CPM Progress Schedule on the last day of every calendar month during which Work is performed. The Contractor shall update all aspects of the CPM Progress Schedule, including: (1) the percentage of Work complete, (2) changes in actual or proposed activity durations, (3) projected future start and completion dates, (4) delays affecting the Work, (5) the correlation of actual costs and projected costs, and (6) additional information requested by the Project Manager or Architect, if applicable, or any duly authorized representative of HAKC. Updated versions of the CPM Progress schedule shall display all information contained in the original version of the CPM Progress Schedule (*i.e.*, the first version of the CPM Progress Schedule approved by the Project Manager or Architect, if applicable, and the Contracting Officer). As part of the monthly updating process, the Contractor shall prepare a narrative progress report describing the physical progress during the previous thirty (30) days, the Contractor's plans for the next thirty (30) days. The narrative portion of the report shall also describe potential delays and problems, and their expected impact on projected completion dates. The Contractor shall submit updated versions of the CPM Progress Schedule with each Application for Payment.

6.1.D. *CPM Schedule to Subcontractors:* The Contractor shall submit copies of the CPM Progress Schedule and all revisions thereto, to all Subcontractors.

6.1.E. *Compliance with CPM Schedule:* The Contractor shall perform the Work in compliance with the original version of the CPM Progress Schedule (*i.e.*, the first version of the CPM Progress Schedule approved by the Architect, if applicable, and the Project Manager). The Contractor shall monitor the Work's progress and notify the Architect if applicable and the Project Manager in writing of any deviations from the original version of the CPM Progress Schedule. If the Architect, if applicable, and/or the Project Manager determines the Work has not reached the level of completion required by the original version of the CPM Progress Schedule, the Architect, if applicable, and/or the Project Manager may require the Contractor to take corrective measures necessary to expedite the progress of the Work, including, without limitation: (1) working additional shifts or overtime; and, (2) supplying additional manpower, equipment, and facilities (hereinafter referred to collectively as "Extraordinary Measures"). The rights of the Architect, if applicable, and Project Manager to require Extraordinary Measures are solely for the purpose of ensuring the Contractor's compliance with this Agreement. The Contractor shall not receive an adjustment to the Contract Price in connection with Extraordinary Measures required pursuant to this Article.

## 6.2 **Article 6. Construction Progress Schedule**

*See* Article 6. (a), (b), and (c) General Conditions of the Contract for Construction HUD form 5370.

### 6.3 **DAILY PROGRESS REPORTS:**

6.3.A. *Preparation & Submission:* The Contractor shall prepare and maintain a daily record of construction progress activities ("Daily Progress Reports"). The Contractor shall deliver Daily Progress Reports to the Architect, if applicable and Project Manager once per week, during every week in which Work is performed.

6.3.B. *Form & Handwriting:* The Daily Progress Reports shall be prepared on a standard form, acceptable to the Architect, and/or Project Manager and shall contain legible handwriting. If the Architect, and/or Project Manager determine that handwriting on a Daily Progress Report is not legible, the Architect and/or the Project Manager may require the Contractor to type subsequent Daily Progress Reports.

- 6.3.C *Contents:* The Contractor shall indicate the following on Daily Progress Reports:
- (1) Subcontractors at the Work Site;
  - (2) approximate number of personnel at the Work Site;
  - (3) meetings and significant decisions;
  - (4) accidents and unusual events;
  - (5) Work stoppages and delays, and the causes of such events;
  - (6) emergency procedures;
  - (7) shortages or losses of materials or Work;
  - (8) Change Orders issued or implemented;
  - (9) anticipated delays, and the anticipated causes of such delays;
  - (10) orders and requests of government authorities;
  - (11) inspections and tests performed, or expected to be performed within the next week;
  - (12) utility services connected or disconnected;
  - (13) equipment or system tests and startups;
  - (14) meter readings and similar recordings;
  - (15) safety precautions or actions taken;
  - (16) general weather conditions, including the high and low temperatures; and,
  - (17) additional information requested by the Architect, if applicable, Project Manager or other duly authorized representative of HAKC.

6.4 ***PROGRESS MEETINGS:***

6.4.A. *Time & Attendance:* HAKC may schedule Progress Meetings during the first and third week of every calendar month during which Work is performed. The Contractor shall attend such Progress Meetings. The Contract shall require its Subcontractors to attend such meetings at HAKC's request.

6.4.B. *Agenda & Minutes:* The Architect, if applicable or Project Manager shall prepare an agenda for Progress Meetings, identifying topics such as the progress of the Work and compliance with this Agreement. The Architect, if applicable or Project Manager shall preside at Progress Meetings. The Architect, if applicable or Project Manager shall record minutes of Progress Meetings and distribute the minutes to parties that attended such meetings.

**Article 7. Site Investigation and Conditions Affecting the Work**

7.1 *GRADES & DIMENSIONS:* The exactness of grades, elevations, dimensions, or locations given on any Specification or Drawing issued by the Architect and/or the Project Manager or work installed by other contractors, is not guaranteed by HAKC. The Contractor shall satisfy itself as to the accuracy of all grades, elevations, dimensions and locations. In all cases of interconnection of the Contractor's Work with existing or other work, the Contractor shall verify all dimensions relating to such existing or other work.

7.2 *FIELD MEASUREMENTS:* The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions with the Specifications and Drawings before commencing construction activities.

7.3 *ERRORS IN SPECS OR DRAWINGS:* Before commencing construction activities, the Contractor shall submit a written report to the Architect, if applicable, and/or the Project Manager and the Contracting Officer of any errors, inconsistencies or omissions in any Specification or Drawing.

**Article 8. Differing Site Conditions**

*See* Article 8, General Conditions of the Contract for Construction HUD form 5370.

**Article 9. Specifications and Drawings for Constructions**

*See* Article 9, General Conditions of the Contract for Construction HUD form 5370.

**Article 10. As-Built Drawings**

*See* Article 10, General Conditions of the Contract for Construction HUD form 5370.

**Article 11. Material and Workmanship**

*See* Article 11, General Conditions of the Contract for Construction HUD form 5370.

## **Article 12. Permits and Codes**

- 12.1 *KANSAS CITY BUSINESS LICENSES:* Before issuance of the Notice to Proceed, the Contractor shall submit evidence to the Contracting Officer or other duly authorized representative of HAKC of the Contractor's current Kansas City, Missouri, Business License. Before submitting its first Application for Payment, the Contractor shall ensure that all Subcontractors possess current Kansas City, Missouri, Business Licenses.
- 12.2 *APPLICABLE LAWS & REGULATIONS:* The Contractor shall comply with all applicable laws, ordinances, codes, rules, and regulations, including, but not limited to Hours and Safety Standards Act, 40 U.S.C. 327, *et seq.* (as supplemented by 29 CFR 5); (B) Anti-Kickback Act, 18 U.S.C. 874, *et seq.* (as supplemented by 29 CFR 3); (C) Conduct and Qualifications regulations found at 24 CFR 85; and, (D) Chapter 290, Wages, Hours and Dismissal Rights, of the Revised Statutes of Missouri, to the extent that such Chapter is not preempted by federal law. The Contractor shall satisfy and comply with applicable HAKC and HUD requirements, regulations and policies.

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

- 13.1 *BARRICADES & FENCING:* The Contractor is responsible for providing adequate barricades or fencing at the Work Site and limiting ingress and egress so as to provide adequate warning to, and prevent injury of, third parties.
- 13.2 *THEFT, VANDALISM & PHYSICAL HARM:* The Contractor shall take appropriate measures to ensure the security of the Work Site. Such security measures shall protect against theft, vandalism and destruction of the Work, equipment, materials and personal property on the Work site. The Contractor shall take reasonable security measures to protect the Contractor's employees, Subcontractors' employees and all other individuals present on the Work Site from assault, battery and other physical harm.
- 13.3 *SAFETY PROGRAM:* Before commencing construction, the Contractor shall design a safety program, and submit a copy of such program to the Architect, if applicable, and the Project Manager. This program shall indicate the Contractor's plan to comply with OSHA and HAZCOM requirements applicable to this Agreement and the Work. The Contractor shall appoint a safety representative on site. The Contractor shall comply with the American Standard Safety Code. The Contractor shall have on site at all times a binder containing Material Safety Data Sheets. The Contractor shall post an outline of the safety program and the name of the safety representative at the Work Site. The Contractor shall implement its safety program throughout the performance of the Work. HAKC and the Architect, if applicable, shall not be responsible for implementation of safety measures.
- 13.4 *LOCAL SAFETY REQUIREMENTS:* The Contractor shall provide any and all measures of protection required by the City of Kansas City, Missouri, for the protection of the public and employees during excavation operations, if any, and performance of the Work. Such safety measures shall include, but shall not be limited to, protection of sidewalks, and placement of barricades, warning lights and signs.

## **Article 14. Temporary Heating**

- 14.1 *PERMANENT EQUIPMENT:* Before operating permanent equipment for temporary equipment is properly installed, lubricated, and equipped with filters. The Contractor shall provide and pay for operation, maintenance, and regular replacement of filters and worn or consumed parts of such equipment. The Contractor shall replace all filters before transferring possession of permanent heating equipment to HAKC.

## **Article 15. Availability and Use of Utility Services**

- 15.1 *UTILITY ACTIVATION & DEACTIVATION:* Before beginning the Work, Contractor shall ensure that appropriate utilities have been deactivated. The Contractor shall be solely responsible for the activation and deactivation of utilities on the Work Site. Contractor shall indemnify HAKC for any and all liability incurred by HAKC, including attorneys' fees, resulting from the Contractor's failure to properly activate or deactivate utilities.
- 15.2 *UTILITY SCHEDULE & EASEMENTS:* The Contractor shall prepare a schedule indicating dates of activation and termination of each temporary utility. The Contractor shall obtain easements necessary for the acquisition of temporary utilities, if HAKC does not own easements that can be used for that purpose.
- 15.3 *UTILITY INSPECTIONS & PERMITS:* The Contractor shall obtain appropriate Inspections, Tests, permits and certifications of appropriate public authorities before activating any temporary utility.

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

- 16.1 *NOTICE OF UTILITY DEACTIVATION:* Contractor shall obtain approval from the Project Manager and the Architect, if applicable, forty-eight (48) hours before deactivating any utilities in occupied or existing facilities.

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

*See* Article 17, General Conditions of the Contract for Construction HUD form 5370.

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

- 18.1. *AIRBORNE DIRT:* If requested by the Architect and/or Project Manager the Contractor shall take necessary measures to limit the amount of airborne dirt and dust.

## **Article 19. Energy Efficiency**

*See* Article 19, General Conditions of the Contract for Construction HUD form 5370.

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

- 20.1 *INSPECTION & TEST ASSISTANCE:* The Contractor shall cooperate with all individuals performing Inspections or Tests, and shall provide access to the Work. The Contractor shall: (1) furnish incidental labor and facilities to facilitate such Inspections or Tests; (2) obtain quantities of samples of materials to be tested; (3) provide facilities for storage and curing of test samples; (4) deliver samples to testing laboratories; (5) provide security and protection of samples and test equipment at the Work Site; and, (6) provide other services reasonably related to the performance of Inspections and Tests.
- 20.2 *INSPECTION & TEST COORDINATION:* The Contractor shall coordinate the Work with Inspections and Tests to avoid delays in the Work and prevent disassembly or uncovering of completed Work.
- 20.3 *LIST OF NONCONFORMING WORK:* When the Contractor believes that all Work is complete, the Contractor shall conduct a thorough inspection of the Work to identify and prepare a written list of all unfinished Work and all Work that otherwise fails to comply with the Specifications, Drawings or any aspect of this Agreement ("List of Unfinished and Nonconforming Work"). The Contractor shall submit its list of Unfinished and Nonconforming Work to the Architect, if applicable, the Project Manager, and any Subcontractors that may be required to perform or correct such Work.
- 20.4 *SUBSTANTIAL COMPLETION APP.:* After completion and correction of all Work identified on the List of Unfinished and Nonconforming Work, the Contractor shall submit to the Architect, if applicable, and the Project Manager a written Application for Certification of Substantial Completion, containing a notarized statement that: (1) the governing codes administration authorities have approved each building; and, (2) the Contractor has obtained certificates of occupancy for each building from appropriate public agencies.
- 20.5 *SUBSTANTIAL COMPLETION CERT.:* Within ten (10) days after receiving the Contractor's Application for Certification of Substantial Completion, the Architect, if applicable, and the Project Manager shall review the Work and identify any remaining unfinished or nonconforming Work. If the Architect, if applicable and the Project Manager agree that the Work is Substantially Complete, they shall issue a Certificate of Substantial Completion, along with a punch list that describes any remaining unfinished or nonconforming Work. If the Architect or the Project Manager determines that the Work is unfinished or nonconforming Work, and submit another Application for Certification of Substantial Completion. The Contractor shall pay all costs associated with the Contractor's second, and subsequent, Applications for Certification of Substantial Completion.
- 20.6 *PARTIAL SUBSTANTIAL COMPLETION:* The Project Manager may, in his/her sole discretion, certify less than all of the Work as Substantially Complete. The Project Manager may require the Contractor to prepare and submit a List of Unfinished and Nonconforming Work for any designated portion of the Work. When the Contractor has performed all of the Work identified on such list, the Contractor shall submit to the Architect, if applicable, and the Project Manager an Application for Certification of Substantial Completion for the designated portion of the Work, containing a notarized statement that: (1) the governing codes administration authorities have approved each building, if applicable, for the designated portion of the Work; and, (2) the Contractor has obtained certificates of occupancy for each building on the designated portion of the Work. If the Architect and/or the Project Manager agree that the designated portion of the Work is complete, they may issue a Certificate of Substantial Completion that identifies the substantially completed portion of the Work. A Certificate of Final Completion shall not be issued for less than all of the Work.

- 20.7 **FINAL COMPLETION APPLICATION:** After performing all Work required by the punch list, the Contractor shall submit to the Architect, if applicable, and the Project Manager a written Application for Certification of Final Completion, that includes a notarized statement that: (1) the Contractor has completed all Work in compliance with the Specifications, Drawings and this Agreement; and, (2) the Work is free from violations of federal, state and local environmental laws, regulations and ordinances, and that all Work meets or exceeds current industry standards.
- 20.8 **FINAL COMPLETION CERTIFICATION:** Within ten (10) days after receiving the Contractor's Application for Certification of Final Completion, the Architect, if applicable, and the Project Manager shall review the Work and identify any remaining unfinished or nonconforming Work. If the Architect and the Project Manager agree that all Work is complete and complies with the Specifications, Drawings and this Agreement, they shall issue a Certificate of Final Completion. If the Architect, if applicable or the Project Manager determines that any Work is incomplete or fails to comply with the Specifications, Drawings or this Agreement, the Contractor's Application for Certification of Final Acceptance shall be denied, and the Contractor shall complete or correct the Work and submit another Application for Certification of Final Completion. The Contractor shall pay all costs associated with the Contractor's second, and subsequent, Applications for Certification of Final Completion.
- 20.9 **EFFECT OF CERTIFICATES:** The issuance of a Certificate of Substantial Completion or a Certificate of Final Completion shall not release the Contractor from liability for defective Work or Work that fails to comply with the Specifications or Drawings to the extent that such defect or nonconformity is not readily evident from visual of the Work Site.

#### **Article 21. Use and Possession Prior to Completion**

- 21.1 **COORDINATION & OCCUPANCY CERT.:** HAKC may use and possess the Work Site and completed and partially completed portions of the Work. The Contractor shall coordinate the Work to facilitate HAKC's use and possession of the Work Site and completed or partially completed portions of the Work. If applicable, the Contractor shall obtain certificates of occupancy from the appropriate authorities before HAKC or HAKC Residents occupy the Work.
- 21.2 **NOTICE OF DELAY:** The Contractor immediately shall provide written notice to the Project Manager if the Contractor believes that HAKC's use or possession of the Work Site or the Work will delay or hinder, or has delayed or hindered, performance of the Work. The Contractor shall waive its rights to damages, an extension of time or other relief for such delay or hindrance, if the Contractor fails to submit such written notice within seven (7) days after commencement of the delay or hindrance

#### **Article 22. Warranty of Title**

*See* Article 22. General Conditions of the Contract for Construction HUD form 5370.

#### **Article 23. Warranty of Construction**

- 23.1 **WARRANTY OBLIGATIONS:** The Contractor shall restore or remove-and-replace warranted Work to its originally specified condition, during the warranty period if the Work does not comply with or fulfill terms of warranty. The Contractor shall restore or remove-and-replace other Work which has been damaged by failure of warranted Work, or which must be removed and replaced to gain access to warranted Work. The Contractor shall pay the cost of restoration or removal-and-replacement without regard to whether HAKC has already benefitted from use of failing Work.
- 23.2 **HAKC'S RECOURSE:** The Contractor's warranties and warranty periods shall not diminish implied warranties, and shall not deprive HAKC of actions, rights or remedies otherwise available as a result of Contractor's failure to fulfill requirements of this Agreement. HAKC reserves the right to reject coincidental product warranties considered to be conflicting with or detracting from requirements of this Agreement.

#### **Article 24. Prohibition Against Liens**

- 24.1 **PARTIAL LIEN WAIVERS:** The Contractor shall attach to every Application for Payment, a notarized Partial Lien Waiver that completely disclaims and waives the Contractors' right to file or maintain a lien against HAKC's property, to the extent of payments previously made to the Contractor. The Contractor shall fully pay, in a timely manner, all Subcontractors, and all agents, persons or entities claiming by or through such Subcontractors. The Contractor shall obtain and attach to every Application for Payment, a notarized Partial

Lien Waiver from every Subcontractor that disclaims and waives the Subcontractor's right to file or maintain a lien against HAKC's property, to the extent of payments previously made to such Subcontractor.

- 24.2 **FINAL LIEN WAIVER & RELEASE:** The Contractor shall attach to its Application for Final Payment a notarized Final Lien Waiver and Release that completely disclaims and waives the Contractor's right to file or maintain any lien against HAKC's property. The Contractor shall obtain and attach to its Application for Final Payment a notarized Final Lien Waiver and Release from every Subcontractor that completely disclaims and waives the Subcontractor's right to file or maintain a lien against HAKC's property. Both Contractor and HAKC agree and understand that said Final Lien Waiver & Release shall be binding upon Contractor's receipt of the final payment from HAKC.
- 24.3 **BOND IN LIEU OF LIEN WAIVER:** If any Subcontractor fails or refuses to furnish a valid or complete Lien Waiver, or Final Lien Waiver and Release, the Contractor shall furnish a bond satisfactory to HAKC to indemnify HAKC against any claim by lien or otherwise.
- 24.4 **UNSATISFIED LIENS & CLAIMS:** If any lien or claim remains unsatisfied after Final Payment, the Contractor shall refund to HAKC all monies necessary to discharge such lien or claim, and shall compensate HAKC for all costs, reasonable attorney's fees, and other damages relating to the lien or claim.

#### **Article 25. Contract Completion Period**

- 25.1 **TIME IS OF THE ESSENCE:** The Contractor agrees and acknowledges that time is of the essence in the performance of this Agreement
- 25.2 **CONTRACT COMPLETION PERIOD:** The contract completion period shall commence on the date of the written Notice to Proceed. The Contractor shall begin on XXX 2018 and shall complete the work and end of contract term in XX work days, on XXX, 2018.

#### **Article 26. Order of Precedence**

*See* Article 26, General Conditions of the Contract for Construction HUD form 5370.

#### **Article 27. Payments**

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- 27.1 **CONTRACT PRICE & TAXES:** HAKC agrees to pay, and the Contractor agrees to accept as payment, for the performance of this Agreement, the not-to-exceed sum of: XXX Dollars and 00/100 (\$0.00) (the "Contract Price"). Any savings resulting from value engineering of the final design of this project shall be applied to, and reduce, the not-to-exceed contract price referenced above. The Contractor shall pay all taxes and contributions measured by wages which may be applicable to this Agreement. Personal property and materials purchased for the purpose of constructing the Work is exempt from sales tax. HAKC shall furnish to the Contractor a tax exemption certificate authorizing the purchase of personal property and materials for the construction, repair and remodeling of the Work. The Contractor shall furnish such certificate to all Sub-contractors. When the Contractor and/or any Sub-contractor purchases personal property or materials, the Contractor and/or Sub-contractor shall present the tax exemption purchase on behalf of HAKC all tangible personal property and materials to be consumed in or incorporated into the Work. The Contractor shall retain all invoices for all personal property and materials consumed in or incorporated into the Work for a period of five (5) years.
- 27.2 **PRICE BREAKDOWN:** The Contractor shall submit a breakdown of the Contract Price ("Price Breakdown") in triplicate to the Contracting Officer, in accordance with Clause 27(c) of the General Conditions. The Price Breakdown shall be prepared on form HUD-51000, Schedule of Amounts for Contract Payments. The Price Breakdown shall consist of major aspects of the Work, and identify separately the dollar values of each Subcontract and contracts with Minority Businesses and Women's Business Enterprises. No payments shall be due until the Price Breakdown is submitted.
- 27.3 **SUBMISSION OF PAYMENT APP.:** The Contractor shall submit the Application for Payment to the Procurement & Contracts Department, prepared in a manner consistent with the Price Breakdown. The Application for Payment shall request payment for the labor and materials incorporated into the Work and materials suitably stored during the preceding calendar months, less the aggregate of previous payments and specified retainage.

- 27.4 **FORM OF PAYMENT APPLICATIONS:** The Contractor shall include the following items in every Application for Payment, in a form satisfactory.
- A. **Cover Letter:** The Contractor shall submit a cover letter that: (1) identifies the Project; (2) assigns a number to the Application for Payment; and, (3) contains a detailed list of enclosures.
  - B. **Price Breakdown:** The Contractor shall submit a copy of the Price Breakdown, prepared in accordance with Paragraph 27.2.
  - C. **Periodic Estimate for Partial Payment:** The Contractor shall complete and submit form HUD-51001, Periodic Estimate for Partial Payment.
  - D. **Change Order Documentation:** The Contractor shall complete and submit form HUD-51002, Schedule of Change Orders. The Contractor shall submit a copy of every Change Order issued by the Contracting Officer.
  - E. **Stored Materials Documentation:** If the Application for Payment requests payment for materials stored, but not yet incorporated into the Work, the Contractor shall: (1) complete and submit form HUD-51003, Schedule of Materials Stored; (2) complete and submit form HUD-51004, Summary of Materials Stored; and, (3) submit other documentation required by Clause 27(g) of the General Conditions. Such documentation of stored materials shall identify: (1) the Contractor or Subcontractor responsible for storing such materials; and, (2) the location where such materials are stored. Form HUD-51003 shall be signed by those employees of the Contractor that prepared and verified such form.
  - F. **Payroll Documentation and Statement of Compliance:** The Contractor shall complete and submit Department of Labor form WH-347, Payroll, pages 1 and 2. The Contractor shall also obtain and submit Department of Labor forms WH-347, page 2, prepared by each Subcontractor performing Work during the month for which payment is requested.
  - G. **Certificate Regarding Payment:** The Contractor shall complete and submit the certification regarding payment, required by Clause 27(e) of the General Conditions.
  - H. **Construction Progress Schedule:** The Contractor shall complete and submit form HUD-5372, Construction Progress Schedule. The Contractor shall update the information contained on form HUD-5372 within one week preceding the submission of its Application for Payment.
  - I. **Certificate and Release:** The Contractor shall complete and submit a Certificate and Release, on HAKC's current form.
  - J. **Partial Lien Waivers:** Contractor shall execute and submit Partial Lien Waivers applicable to the Contractor and every Subcontractor as required by Article 24. The Contractor shall also submit all previously executed Partial Lien Waivers.
  - K. **CPM Progress Schedule:** The Contractor shall update and submit its CPM Schedule, as required by Article 6.
  - L. **Photographs and Videotape:** The Contractor shall submit photographs and videotapes, as required by Article 50; and,
  - M. **Other Documents:** In addition to the above, the Contractor shall submit other documentation, if any, required by this Agreement.
- 27.5 **PAYMENT CERTIFICATE:** After receiving the Contractor's Application for Payment, the Procurement Department shall either issue to the Contracting Officer a Certificate for Payment for such amount determined as properly due, or notify the Contracting Officer of its reasons for rejecting the Application for Payment, in whole or in part. The Procurement Department shall return the Application for Payment to the Contractor within seven (7) days after receiving such application and shall specify the reason(s) for returning the application, if it is determined: (1) the Application for Payment lacks adequate substantiating data; or, (2) the form of the Application for Payment is unsatisfactory.
- 27.6 **PAYMENT:** Within fourteen (14) days after receipt of the Contractor's Application for Payment, unless a longer period (not to exceed thirty (30) days) is necessary to afford the Architect and/or the Project Manager a



practicable opportunity to adequately inspect the Work and determine the adequacy of the Contractor's performance under this Agreement, the HAKC shall either pay the Contractor the amount certified by the Architect and/or the Project Manager or notify the Contractor of its reasons for withholding payment, in whole or in part.

- 27.7 *REJECTION OF PAYMENT APPLICATION:* The Architect and/or the Project Manager may reject an Application for Payment (including an Application for Final Payment) or withhold payment, in whole or in part, to the extent reasonably necessary to protect the interests of HAKC. Applications for Payment (including an Application for Final Payment) may be rejected and payment may be withheld from the Contractor for reasons including, but not limited to, the following: (1) citation by a public agency or authority for acts of the Contractor or any Subcontractor which violate any federal, state or local law, regulation or ordinance; (2) liquidated damages; (3) unsatisfactory progress; (4) defective Work not remedied; (5) disputed Work; (6) failure to strictly comply with any provision of this Agreement; (7) third party claims filed, or reasonable evidence that such claim will be filed, as a result of the Work or the Contractor's conduct; (8) failure to make timely payment for labor, equipment or materials; (9) reasonable evidence that a Subcontractor cannot be fully compensated under its contract with the Contractor for the unpaid balance of the Contract Price; and, (10) damage to another contractor, Subcontractor.
- 27.8 *EFFECT OF PAYMENT:* The issuance of a Certificate for Payment and the making of payment to the Contractor shall not represent that the Architect and/or Project Manager has: (1) made exhaustive or continuous on-site inspections to check the quantity of the Work; (2) reviewed the Contractor's means, methods, techniques, sequences or procedures; (3) reviewed copies of requisitions received from Subcontractors to substantiate the Contractor's right to payment; or (4) attempted to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Price. The issuance of a Certificate for Payment and the making of payments under this Agreement shall not be evidence of the satisfactory performance of the Work, in whole or in part. The issuance of a Certificate for Payment and the making of payments shall not be construed as an acceptance of defective Work or improper materials.
- 27.9 *ERRONEOUS PAYMENT APP.:* If the Contractor, after submitting an Application for Payment or an Application for Final Payment, discovers that a portion or all of such application requested payment for Work that fails to conform to the Specifications, Drawings, or this Agreement, then the Contractor shall: (1) notify the Contracting Officer of such performance deficiency; and (2) pay HAKC interest on the value of the nonconformity (computed in the manner provided in 5 U.S.C. § 3909(c)) from the date of the Contractor's receipt of payment for the deficient Work until: (A) the date the Contractor notifies the Contracting Officer that the nonconformity has been corrected; or (B) the date that the Contractor reduces the amount of any subsequent Application for Payment by an amount equal to the value of nonconformity.
- 27.10 *RETAINAGE:* The Contracting Officer shall retain ten percent (10%) of each payment to the Contractor, unless the Architect and/or the Project Manager or the Contracting Officer determines that a higher rate of retainage is required to ensure performance of this Agreement. In no event shall the retainage exceed ten percent (10%) of the Contract Price. Within thirty (30) days after Certification of Substantial Completion, HAKC shall pay the retainage to the Contractor, less two times (2X) the dollar value of any unfinished or nonconforming Work, and less the dollar value of any claims asserted by HAKC and other deductions authorized by this Agreement or permitted by law.
- 27.11 *FINAL PAYMENT APPLICATION:* The Contractor shall submit an Application for Final Payment to the Project Manager after issuance of the Certificate of Final Completion. In addition to the items required in every Application for Payment, the Application for Final Payment shall include the following:
- A. *Consent of Surety:* The Contractor shall submit a properly executed AIA Document G707, Consent of the Surety Company to Final Payment;
  - B. *Certificate of Completion-Consolidated:* The Contractor shall submit a Certificate of Completion-Consolidated, on HAKC's current form.
  - C. *Warranties & Manuals:* The Contractor shall submit all written warranties, guarantees, maintenance agreements, workmanship bonds and manuals relating to the Work or components thereof.
  - D. *Release of Claims:* The Contractor shall submit a release of all claims against HAKC arising by virtue of this Agreement, other than claims, in stated amounts, that the Contractor has specifically excepted from the release. If any claims are excepted from the release, the Contractor shall clearly define the basis and scope of each individual claim. The Contractor shall not request payment for excepted claims in its Application for Final Payment.

- E. *Final Lien Waiver & Release:* The Contractor shall execute and submit a Final Lien Waiver and Release. The Contractor also shall obtain and submit a Final Lien Waiver and Release from every Subcontractor.
  - F. *Wages, Hours & Dismissal Rights Affidavit:* The Contractor shall submit an affidavit stating that it has fully complied with the provisions and requirements of Chapter 290, Wages, Hours and Dismissal Rights, of Missouri's Revised Statutes. The Contractor shall submit similar affidavits that it has obtained from each Subcontractor, after the Subcontractor has completed its portion of the Work.
  - G. *Stock & Parts:* The Contractor shall submit evidence that extra stock and spare parts, tools, and keys required by this Agreement, if any, have been submitted to the Project Manager or placed in approved storage areas at the Work Site.
- 27.12 *FINAL PAYMENT CERTIFICATE:* After receiving the Contractor's Application for Final Payment, the Architect and/or Project Manager shall either issue to the Contracting Officer a Certificate for Final Payment for such amount as the Architect and/or Project Manager determines is properly due, or notify the Contracting Officer of its reasons for rejecting the Application for Final Payment, in whole or in part. The Architect and/or Project Manager shall return the Application for Final Payment to the Contractor within seven (7) days after receiving such application, and shall specify the reason(s) for returning the application, if the Architect and/or Project Manager determines: (1) the Application for Final Payment lacks adequate substantiating data; or, (2) the form of the Application for Final Payment is unsatisfactory.
- 27.13 *FINAL PAYMENT:* Within fourteen (14) days after the Architect and/or the Project Manager receives the Contractor's Application for Final Payment, unless a longer period (not to exceed thirty (30) days) is necessary to afford the Architect and/or Project Manager a practicable opportunity to adequately inspect the Work and determine the adequacy of the Contractor's performance under this Agreement, the Contracting Officer shall either pay the Contractor the amount certified by the Architect and/or Project Manager or notify the Contractor of its reasons for withholding Final Payment, in whole or in part. The Contracting Officer shall not make Final Payment to the Contractor, unless or until the Contractor submits the affidavits required by RSMo. § 290.290, concerning compliance with Chapter 290, Wages, Hours, and Dismissal Rights, of Missouri's Revised Statutes.

## **Article 28. Contract Modifications**

*See* Article 28, General Conditions of the Contract for Construction HUD form 5370.

## **Article 29. Changes**

- 29.1 *PERFORMANCE OF CHANGED WORK:* The Contractor shall not perform Work requiring reimbursement in addition to the Contract Price, or extensions of the Contract Time, without receiving a prior written Change Order issued by the Architect and /or Project Manager signed by the Contracting Officer.
- 29.2 *CHANGE ORDER APPLICATIONS:* If the Contractor believes that any instruction, act, or event justifies a change in the Contract Price, the Contract Time, or other provision of this Agreement, the Contractor shall submit to the Architect and/or Project Manager a written Application for a Change Order.
- 29.3 *DELAYS:*
- 29.3.A. *Sources of Delay Claims:* If the Contractor is delayed at any time while performing the Work by labor disputes, fire, extraordinary adverse weather conditions not reasonably anticipatable, unavoidable casualties, environmental hazards or any cause which the Contractor believes justifies an extension of time, the Contractor shall submit to the Architect and/or Project Manager an Application for a Change Order, seeking an extension of the Contract Time.
  - 29.3.B. *Critical Path Delays:* In no event shall the Contract Time be extended as the result of a delay, unless Work on the critical path of the CPM Progress Schedule has been delayed.
  - 29.3.C. *Weather Delays:* If adverse weather conditions are the basis for the Contractor's Application for a Change Order, such application shall be documented by data substantiating that: (1) weather conditions were abnormally severe for month in which such conditions occurred, and could not have been

reasonably foreseen; (2) such weather conditions delayed the scheduled construction; and, (3) the Contractor did not contribute to the delay in the construction. The Contractor shall not be awarded a Change Order due to adverse weather conditions if the Contractor fails to submit such documentation to the Architect and/or Project Manager

- 29.4 *CONTENT OF CHANGE ORDER APP.:* The Contractor's Application for a Change Order shall provide a detailed explanation of the change requested, including, but not limited to: (1) facts giving rise to such Application for a Change Order; (2) the identification, quantity, and cost of machinery, equipment and materials associated with the change; (3) a description of the types, hours and pay rates of laborers required by such change; (4) the amount of additional time required for performance of the change; (5) information and dates indicating whether, and to what extent, the change will delay the completion of the Work in its entirety; (6) transportation and delivery costs associated with the change; (7) costs of preparation and/or revision to specifications or Drawings resulting from the change; (8) any increase in insurance or bond premiums; (9) increases or decreases in the use or funding of Minority Businesses or Women's Business Enterprises; and, (10) such other information, if any, that may be required by the Architect, and/or Project Manager, or the Specifications.
- 29.5 *ACTUAL COSTS:* The Contractor's Application for a Change Order shall state the Contractor's actual cost of furnishing machinery, equipment, materials and labor, without including amounts for the Contractor's overhead or profit. If requested by the Architect and/or the Project Manager, the Contractor shall submit satisfactory evidence that it's Application for a Change Order does not include amounts for overhead or profit.
- 29.6 *TIME FOR CHANGE ORDER APP.:* Contractor shall assert its written Application for a Change Order to the Architect and/or Project Manager within seven (7) days after the occurrence of the act or event giving rise to such request. Failure by Contractor to submit its written Application for a Change Order within the preceding time shall constitute a waiver of the Contractor's rights, if any, to an adjustment of the Contract Price, the Contract Time, or other provision of this Agreement.
- 29.7 *CHANGE ORDER APP. DECISIONS:* Within thirty (30) days after receiving the Contractor's Application for a Change Order, the Contracting Officer shall grant or deny the Contractor's application, or notify the Contractor of the date when such action will be taken. If the Contracting Officer grants the Contractor's Application for a Change Order, in whole or in part, the Architect and/or Project Manager shall issue a written Change Order, as provided below. If the Contracting Officer denies the Contractor's Application for a Change Order, the Contractor may pursue its claim under Article 31, Disputes.
- 29.8 *ISSUANCE OF CHANGE ORDERS:* The Contracting Officer may, at any time, make changes to this Agreement, including but not limited to changes in: (1) the scope of the Work; (2) the method of performing the Work; and (3) the rate of performance of the Work. Notwithstanding any provision to the contrary, this Agreement cannot be orally modified. All changes shall be made in a writing signed by the Contracting Officer and describing the change ("Change Order").
- 29.9 *CONTENT OF CHANGE ORDERS:* All Change Orders shall include: (a) a detailed description of the change in the Work, including a reference to applicable Specifications and Drawings; (b) the extent of the adjustment in the Contract Price, if any; and, (c) the extent of the adjustment in the Contract Time, if any.
- 29.10 *OVERHEAD AND PROFIT:* If a Change Order increases the Contract Price, the Contracting Officer may include amounts for overhead and profit in the dollar value of the Change Order. The Contracting Officer, in its sole discretion, shall determine the amount of overhead and profit in accordance with the Specifications.
- 29.11 *PERFORMANCE OF CHANGES:* The issuance of Change Orders shall not invalidate this Agreement. Unless expressly provided otherwise in writing, the Contractor shall perform all changed Work in compliance with the terms and conditions of this Agreement.

### **Article 30. Suspension of Work**

*See* Article 30. General Conditions of the Contract for Construction HUD form 5370.

### **Article 31. Disputes**

- 31.1 *CLAIMS DEFINED*: The term "Claim" as used in this Article 31, means a demand or assertion by the Contractor seeking payment of money, the adjustment or interpretation of Agreement terms, or other relief arising under or relating to this Agreement. Applications for Change Orders pursuant to Article 29, Changes, and routine Applications for Payment shall not constitute Claims.
- 31.2 *SUBMISSION OF CLAIMS*: Within thirty (30) days after the Contractor knows, or should have known, the facts giving rise to a Claim, the Contractor shall submit its Claim(s) in writing to the Architect and/or Project Manger. The Contractor acknowledges that HAKC will be prejudiced if the Contractor fails to submit its Claim(s) in the time provided. **Failure by the Contractor to assert a written Claim within the time provided shall constitute a waiver of such Claim and all rights associated therewith.**
- 31.3 *CONTINUED PERFORMANCE OF WORK*: Contractor shall proceed diligently with the performance of the Work required under this Agreement pending final resolution of any Claim or legal action arising under this Agreement, and shall comply with any decision of the Contracting Officer.
- 31.4 *CONTENT OF CLAIMS*: The Contractor's Claim shall provide a detailed description of the facts giving rise to such Claim and the nature and scope of the Contractor's demand. The Claim shall contain sufficient information to enable the Contracting Officer to make an informed decision concerning the Claim.
- 31.5 *DECISIONS REGARDING CLAIMS*: Within sixty (60) days after receipt of a written Claim, the Contracting Officer shall render a decision concerning the Claim. The Contracting Officer shall issue a written decision to HAKC and the Contractor, by certified mail, return receipt requested. Failure of the Contracting Officer to issue a decision within the sixty (60) day period shall have the effect of a denial of the Contractor's Claim. The Contracting Officer's determination of Claims shall be final and binding of the contractor.

## **Article 32. Default**

- 32.1 *HAKC'S RIGHT TO PERFORM WORK*: If Contractor fails or neglects to perform the Work properly or strictly comply with any provision of this Agreement, HAKC may, without prejudice to any other right or remedy HAKC may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor.
- 32.2 *TERMINATION FOR CAUSE*
- 32.2.A. *"Causes" for Termination*: Any of the following conditions shall justify HAKC's termination of this Agreement "for cause": (1) the Contractor fails to prosecute the Work, or a separable part thereof, with the diligence that will ensure its completion within the time specified in this Agreement; (2) the Contractor fails to complete the Work, or any separable part thereof, in the time specified in this Agreement; (3) the Contractor fails to make payment to a Subcontractor in accordance with the respective agreement between the Contractor and such Subcontractor; (4) the Contracting Officer determines that the Contractor has an Organizational Conflict of Interest; (5) the Contractor becomes subject to mandatory ineligibility to contract with HUD, under applicable laws and regulations; or, (6) the Contractor fails to strictly comply with any term, condition, or provision of this contract.
- 32.2.B. *Notice of Intent to Terminate for Cause*: Upon occurrence of any of the conditions specified in the preceding paragraph, HAKC may give the Contractor written notice that: (1) specifies the condition constituting cause for termination; (2) provides a period of ten (10) days in which the Contractor may cure the condition; (3) informs the Contractor of HAKC's intent to terminate this Agreement if the Contractor fails to cure the condition during the ten (10) day period; (4) informs the Contractor of its contractual liabilities if this Agreement is terminated for cause; and, (5) requests the Contractor to show cause why this Agreement should not be terminated for cause.
- 32.2.C. *Notice of Termination for Cause*: If the Contractor fails to cure the condition constituting cause for termination during the ten (10) day period, HAKC may terminate this Agreement for cause, by issuing a notice of termination to the Contractor.
- 32.2.D. *Effect of Termination for Cause*: If this contract is terminated for cause, Contractor and its sureties shall be liable for any damage to HAKC resulting from Contractor's refusal or failure to perform the Work in compliance with this Agreement, including attorneys' fees, interest, and any increased costs incurred by HAKC while completing the Work with replacement contractors.
- 32.2.E. *Unauthorized Termination for Cause*: If, after termination for cause, it is determined that such Termination for Cause was not authorized by this Article, then the rights and obligations of the parties will be the same as if this Agreement had been terminated for convenience pursuant to Article 34.

### **Article 33. Liquidated Damages**

- 33.1 *LIQUIDATED DAMAGES:* For each calendar day that the Contractor has not obtained an executed Certificate of Substantial Completion for Work, HAKC shall be entitled to recover from the Contractor the sum of Thirty Five Dollars & Zero Cents (\$35.00) per calendar day, not as a penalty, but as liquidated damages.
- 33.2 *RECOVERY OF LIQUIDATED DAMAGES:* HAKC shall be entitled to recover liquidated damages from the Contractor immediately as those damages accrue. HAKC may recover liquidated damages from the Contractor and/or may set-off liquidated damages from amounts then or thereafter due the Contractor. Notwithstanding the assessment of liquidated damages, the Contractor shall be liable to HAKC for damages caused other than by delay.

### **Article 34. Termination for Convenience**

- 34.1 *TERMINATION FOR CONVENIENCE DEFINED:* The Contracting Officer may, at any time, terminate this Agreement, in whole or in part, for HAKC's convenience and without cause.
- 34.2 *PROPOSAL OF AMOUNTS OWED:* If this Agreement is terminated for convenience, the Contractor shall submit a proposal to the Contracting Officer stating the Contractor's claim for all amounts owed ("Proposal"). The Proposal shall be submitted within fourteen (14) days after the effective date of termination.
- 34.3 *EFFECT OF TERMINATION FOR CONVENIENCE:* The Contracting Officer shall not be bound by the Proposal, but should consider the Proposal when determining the amount owed to the Contractor. The Contractor shall receive payment for the total value of the Work performed before termination for convenience, less the total and the amount of any claims that HAKC asserts against the Contractor. If this Agreement is partially terminated for convenience, the Contracting Officer shall reduce the Contract Price in proportion to the percentage of work terminated.
- 34.4 *TERMINATION GENERALLY:*
- 34.4.A. *Notice of Termination:* Termination of this contract shall be effected by delivery to the Contractor of written notice of termination, sent by certified mail, return receipt requested, specifying: (1) whether the termination is for cause or convenience; (2) the extent to which the performance of the Work is terminated; (3) the effective date of termination; and, (4) any special instructions. If the contract is partially terminated, the notice of termination shall identify specific items being terminated and shall notify the Contractor of its obligation to proceed under the un-terminated portion of the contract. If the contract is terminated for cause, the notice of termination additionally shall state: (1) the acts or omissions constituting cause for termination; (2) the Contracting Officer's determination that the Contractor's failure to perform is not excusable; and (3) HAKC's rights to charge excess costs of re-procurement and completion to the Contractor. Contractor shall deliver a copy of the notice of termination to its surety or sureties.
- 34.4.B. *Completion After Termination:* Upon the termination of this Agreement, for cause or convenience, HAKC may take over the Work and complete it by whatever method HAKC may deem expedient, may accept assignment of Subcontracts pursuant to Article 37 of this Agreement, and may take possession of and use all materials, equipment, and plant on the Work Site. Upon termination, the Contractor shall follow the Contracting Officer's instructions regarding the transition of the responsibilities, including immediate delivery to the Contracting Officer of all files, papers and records related to the Contractor's performance of this Agreement.
- 34.4.C. *Disputes Regarding Termination:* Disputes relating in any way to termination shall be governed by the provisions of Article 31, Disputes.

### **Article 35. Assignment of Contract**

See Article 35 General Conditions of the Contract for Construction HUD form 5370

### **Article 36. Insurance and Bonds**

- 36.1 *COST OF INSURANCE:* The Contractor shall maintain all insurance required by this Agreement at the Contractor's own expense.
- 36.2 *DIVISIONS OF CGL COVERAGE:* The Commercial General Liability ("CGL") insurance required by Clause 36 of the General Conditions shall include the following divisions of coverage: (1) Premises Operations; (2)

Independent Contractors' Protective; (3) Products and Completed Operations; and, (4) Broad Form Property Damage. The Contractor shall maintain the Products and Completed Operations coverage for two (2) years following Final Payment. The Broad Form Property Damage Coverage shall include Completed Operations. The CGL policy shall include coverage for property damage resulting from blasting, explosion, or collapse of buildings. The policy limits of the CGL policy shall apply to liability relating to this Agreement only.

36.3 *CGL POLICY LIMITS:* The CGL policy shall contain policy limits of not less than the following:

**Liability/Bodily Injury:**

\$3,000,000.00 all claims for single occurrence.  
\$500,000.00 for any one person in a single occurrence

**Property Damage:**

\$500,000 each occurrence; and,

**Products and Completed Operations:**

\$500,000 each occurrence

36.4 *AUTOMOBILE LIABILITY POLICY LIMITS:* The Automobile Liability insurance required by Clause 36 of the General Conditions shall contain policy limits of not less than the following:

**Bodily Injury:**

\$500,000 each person,  
\$500,000 each occurrence; and,

**Property Damage:**

\$500,000 each occurrence

36.5 *WORKER'S COMPENSATION COVERAGE:* The Worker's Compensation insurance required by Clause 36 of the General Conditions, shall contain policy limits equal to, or greater than, the policy limits required by state or federal law, and not less than:

\$500,000 per accident;  
\$100,000 disease, policy limit;  
\$100,000 disease, each employee

36.7 *BUILDERS RISK INSURANCE COVERAGE:* Contractor shall maintain Builder's Risk Insurance coverage consistent with HUD requirements as set forth in Article 36 of the General Conditions Form HUD-5370. The amount of coverage shall be the full cash value of all completed construction.

36.7 *NAMED INSURED:* HAKC shall be a named additional insured on all insurance policies required by this Agreement.

36.8 *NON-WAIVER OF SOVEREIGN IMMUNITY:* The HAKC is a public entity and political subdivision of the State of Missouri and is protected by the doctrine of sovereign immunity pursuant to Section 537.600 RSMo. The foregoing provisions requiring insurance coverage shall not be deemed a relinquishment or waiver of any kind of limitations of liability provided or available to HAKC under applicable state governmental immunities law. The purpose of this insurance does not include coverage for any liability or suit for damages that is barred by the doctrines of sovereign or governmental immunity by whatever name, as set forth in RS MO 537.600, et. seq. This policy is not intended to act as a waiver, nor is it a waiver of any defense available to the Insured by statute or at common-law.

36.9 *BONDS:*

36.10.A. *Bid Guarantee:* Each bidder shall submit to HAKC a bid guarantee equivalent to five percent (5%) of the bid price for each submission of \$50,000 in value or greater. Each bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying the bid, as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

- 36.10.B. *Performance Bond:* Before commencement of the Work, for each contract of \$50,000 in value or greater, the Contractor shall deliver to the Contracting Officer an executed Performance Bond, issued in favor of HAKC in an amount equal to one hundred percent (100%) of the Contract Price consistent with the obligation within form HUD-5369, paragraph 10, Assurance of Completion.
- 36.10.C. *Payment Bond:* Before commencement of the Work, for each contract of \$50,000 in value or greater, the Contractor shall deliver to the Contracting Officer an executed Labor and Material Payment Bond, issued in favor of HAKC in an amount equal to one hundred percent (100%) of the Contract Price. Such bond shall expressly incorporate the obligations created by the Davis-Bacon Act, and Missouri law regarding prevailing wages and prompt payment on public works contracts. The Contractor's bond shall satisfy the requirements of Missouri Revised Statutes § 107.170. The Contractor shall indemnify HAKC's officers, agents, and employees for any liability, including court costs and attorneys' fees, relating to the Contractor's failure to obtain such bond.
- 36.10.D. *Sureties:* The Contractor shall obtain the performance bond and the payment bond from one or more of the surety companies listed in the most recently published U.S. Treasury Circular 570 (often referred to as the "T-list"). The Contractor shall keep the sureties informed of the progress of the Work, and, where necessary, obtain the sureties' consent to: (1) changes in the Work; (2) reduction or release of retention; (3) Final Payment; (4) termination of this Agreement; and, (5) all other issues requiring the sureties' consent.

### **Article 37. Subcontracts**

- 37.1 *APPROVAL OF SUBCONTRACTORS:* The Contractor shall not engage Subcontractors without the prior written approval of HAKC. Regardless of HAKC's prior approval, the Contractor shall be responsible for all actions and/or inactions by said Subcontractors that relate in any way to this Agreement.
- 37.2 *HAKC AND SUBCONTRACTORS:* Nothing contained in this Agreement shall create any professional obligation or contractual relationship between HAKC and any Subcontractor, except that HAKC shall be an intended third-party beneficiary of all agreements between Contractor and such parties. Contractor shall include language in every Subcontract which indicates that HAKC is an intended third-party beneficiary of such Subcontract.
- 37.3 *ASSIGNMENT OF SUBCONTRACTS:* The Contractor shall incorporate a clause in every Subcontract that authorizes assignment of such Subcontract from the Contractor to HAKC in the event that: (1) the Contractor is terminated pursuant to Articles 32 or 34 of this Agreement; and, (2) HAKC accepts assignment of such Subcontracts within ten (10) business days after the date of termination by notifying the Subcontractor in writing.
- 37.4 *FLOW-DOWN OF OBLIGATIONS:* By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work performed by the Subcontractor, to be bound to the Contractor by the terms of this Agreement, and to assume toward the Contractor all obligations and responsibilities which the Contractor assumes toward HAKC. The Contractor shall incorporate into every Subcontract all obligations regarding Subcontractors contained in this Agreement. Each Subcontract shall preserve and protect the rights of HAKC under this Agreement with respect to the Work to be performed by the Subcontractor. The Contractor shall require each Subcontractor to enter into similar agreements with their Subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to execution of its Subcontract, copies of this Agreement to which the Subcontractor will be bound. The Contractor shall ensure that its Subcontractors make available this Agreement to their proposed Subcontractors.
- 37.5 *SUBSTITUTION OF SUBCONTRACTORS:* The Contractor may substitute Subcontractors or modify agreements with Subcontractors only after obtaining written approval of the Contracting Officer. If such substitutions or changes would result in the Contractor failing to meet the employment standards or other requirements set forth in this Agreement, the Contractor shall submit a request for waiver of such requirements to the Contracting Officer.
- 37.6 *PAYMENT OF SUBCONTRACTORS:* The Contractor shall include clauses in each Subcontract that: (1) require the Contractor to pay the Subcontractor under its Subcontract, within seven (7) days after the Contractor receives payment under this Agreement for satisfactory Work performed, or materials or services supplied by the Subcontractor; (2) obligate the Contractor to pay to the Subcontractor an interest penalty on late payments, beginning on the day after payment is due and ending on the day payment is made (and computed at the rate specified in 5 U.S.C. § 3902(a)); and, (3) require the Contractor to include in each of its Subcontracts a provision requiring the Subcontractor to include a payment clause and an interest penalty clause conforming to the standards of (1) and (2) of this Paragraph, in each of the Subcontractor's Subcontracts, and a clause requiring each of the Subcontractor's Subcontractors to include such clauses in their Subcontracts with lower-tier Subcontractors.

37.7 **RETAINAGE:** The Contractor shall not withhold retainage in excess of five percent (5%) of a Subcontract's value unless the Contracting Officer or the Architect and or the Project Manager determine that a higher rate of retainage is required to ensure performance of the Subcontract. In no event shall the Contractor withhold retainage in excess ten percent (10%) of a Subcontract's value.

37.8 **WAGES & HOURS AFFIDAVIT:** After each Subcontractor completes its portion of the Work, the Contractor shall obtain from the Subcontractor an affidavit stating that the Subcontractor has fully complied with the provisions and requirements of Chapter 290, Wages, Hours and Dismissal Rights, of Missouri's Revised Statutes.

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

*See* Article 38. General Conditions of the Contract for Construction HUD form 5370.

**Article 39. Equal Employment Opportunity**

*See* Article 39. General Conditions of the Contract for Construction HUD form 5370 for the Contractor's obligations.

**Article 40. Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968**

*See* Article 40. General Conditions of the Contract for Construction HUD form 5370.

**Article 41. Interest of Members of Congress**

*See* Article 41. General Conditions of the Contract for Construction HUD form 5370.

**Article 42. Interest of Members, Officers, or Employees and Former Members, Officers or Employees**

*See* Article 42 General Conditions of the Contract for Construction HUD form 5370.

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

*See* Article 43. General Conditions of the Contract for Construction HUD form 5370.

**Article 44. Royalties and Patents**

*See* Article 44. General Conditions of the Contract for Construction HUD form 5370.

**Article 45. Examination and Retention of Contractor's Records**

*See* Article 45. General Conditions of the Contract for Construction HUD form 5370.

**Article 46. Labor Standards: Davis-Bacon and Related Acts**

46.1 **COMPLIANCE AND INDEMNIFICATION:** The Contractor shall follow and enforce all requirements of the Davis-Bacon Act. The Contractor shall pay not less than the applicable wage rates established by state or federal law to all employees performing the Work. The Contractor shall ensure that all Subcontractors also pay not less than the applicable wage rates. The Contractor shall assume exclusive liability for and defend, indemnify (including the payment of attorneys' fees) and hold HAKC harmless from liability relating to wage withholdings or contributions. Prior to Final Payment, the Contractor shall submit to the Contracting Officer an affidavit stating that the Contractor and its Subcontractors have fully complied with the Davis-Bacon Act.

**Article 47. Labor Standards-Non-Routine Maintenance**

*See* Article 47. General Conditions of the Contract for Construction HUD form 5370.

**Article 48. Non-Federal Prevailing Wage Rates**

*See* Article 48 General Conditions of the Contract for Construction HUD form 5370.



## **Article 49. Miscellaneous**

### **49.1. CONFLICTS OF INTEREST:**

- 49.1.A. *OCI Defined:* An Organizational Conflict of Interest ("OCI") is a situation in which the nature of Work under this Agreement and the Contractor's organizational, financial, contractual or other interests are such that: (1) Award of this Agreement may result in an unfair competitive advantage; or (2) the Contractor's objectivity in performing the Work required under this Agreement may be impaired. The Contractor warrants that, except as otherwise disclosed to the Contracting Officer in writing, it does not have any OCI.
- 49.1.B. *Discovery of OCI:* The Contractor agrees that if after award of this Agreement, the Contractor discovers an OCI with respect to this Agreement, the Contractor shall make an immediate and full disclosure in writing to the Contracting Officer, which shall include a description of the action that the Contractor has taken or intends to take to eliminate or neutralize the OCI.
- 49.1.C. *Subcontracts:* The provisions of this Agreement regarding OCIs shall be included in all Subcontracts. The Contractor shall include in all Subcontracts any and all provisions necessary to eliminate or neutralize conflicts of interests.

### **49.2 ENVIRONMENTAL HAZARDS:**

- 49.2.A. *Environmental Compliance:* Contractor shall perform all Work on the Project in compliance with all federal, state and local environmental laws and regulations. When possession of the Work is transferred to HAKC, the Contractor shall ensure that the Work is unimpaired by environmental liens. When submitting its Application for Certification of Final Completion, Contractor shall verify that the Project is free from any violations of federal, state or local environmental laws, regulations, or ordinances.
- 49.2.B. *Hazardous Waste:* If the Contractor encounters on the site material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), or other hazardous substances regulated by federal, state or local laws, Contractor shall immediately stop its Work in the area affected and report the condition to HAKC. Work in the affected area shall thereafter be resumed immediately following the occurrence of any one of the following events: (1) HAKC causes remedial work to be performed which results in the absence of the hazardous materials; (2) HAKC and the Contractor, by written agreement, decide to resume performance of the Work; or, (3) an appropriate governmental authority determines that the Work may safely and lawfully proceed, as evidenced by a written report to that effect. Notwithstanding any provision to the contrary, the Contractor shall be solely responsible for the removal, handling, transportation, and disposal of all hazardous waste either produced on or brought to the Work site by Contractor or any Subcontractor.

### **49.3 VIDEOTAPE AND PHOTOGRAPHS**

- 49.3.A. *Video Footage:* If applicable and requested, before starting the Work, the Contractor shall submit to the Contracting Officer video footage of existing site and building conditions. The video footage shall show the exterior of each building on the Project and the interior of non-occupied building units.
- 49.3.B. *Photographs:* If applicable and requested, the Contractor shall submit professionally-produced photographs to the Architect along with every Application for Payment. The photographs shall be taken one week before submission to the Architect, and/or the Project Manager. The photographs shall include two (2) photographs of the entire Project from differing directions, five (5) interior photographs indicating the relative progress of the Work, and five (5) exterior photographs which also indicate the relative progress of the work. The Contractor shall submit two (2) prints and the negatives of each photograph. The photograph prints shall be 8" X 10" mounted on 8-1/2" X 11" soft card stock, with a left edge binding margin for a three hole punch. The face of every photograph shall identify the Project, and state the orientation and the time and date on which the photographs were taken.

### **49.4 CONTRACT DOCUMENTS:**

- 49.4.A. *Component Parts:* This Agreement shall consist of the following component parts: (1) this document, entitled Contract for Construction Services; (2) General Conditions of the Contract for Construction, form HUD-5370; (3) Change Orders issued by the Contracting Officer; (4) the Specifications; (5) the Drawings; and (6) the Scope of Work, certifications, HUD forms 5369 and 5369 A and amendments.

- 49.4.B. *Contradictions:* In the event that any provision in any component part of this Agreement contradicts or conflicts with any provision of any other component part, the General Conditions of the Contract for Construction, form HUD-5370 shall govern and control.
- 49.4.C. *Illegality & Invalidity:* If any provision of this Agreement is determined to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect. It is the intention of the parties that if any such provision is held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is possible which is legal, valid and enforceable.
- 49.4.D. *Entire Agreement:* This Agreement shall constitute the entire agreement between the parties. There are no agreements, understandings, warranties or representations between the parties except as set forth herein.
- 49.5 *CONFIDENTIAL INFORMATION:* Unless otherwise required by the Missouri Open Records Law, Chapter 610, Revised Statutes of Missouri, all information received by the Contractor regarding this Agreement and the Work shall be considered non-public and confidential. Contractor hereby acknowledges that said information is deemed non-public information and Contractor shall not disclose any such information to third parties without the prior written approval of HAKC, except as necessary for performance of the Work.
- 49.6 *NON-WAIVER:* Failure of HAKC to insist upon strict performance of the terms and conditions of this Agreement or to exercise any right or remedy hereunder shall not be construed as thereafter waiving any such terms, conditions, rights or remedies. No action or failure to act by HAKC shall constitute a waiver of any right of HAKC under this Agreement, nor shall any such action or failure to act constitute an approval or acquiescence of any breach hereunder. Waiver of any breach of this Agreement shall not constitute a waiver of any subsequent breach of the same or any other provision hereof.
- 49.7 *CONSTRUCTION OF THIS AGREEMENT:* This Agreement shall not be construed or interpreted against the drafting party. In the event of a dispute over its meaning or application, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against either party.
- 49.8 *NOTICES:* Any notice, payment, demand or communication required or permitted to be given by any provision of this Agreement must be in writing and will be deemed to have been given at the earliest of: (1) the date received by the party designated to receive such notice, (2) the date following the day sent by overnight courier, (3) the third (3rd) business day after the same is sent by certified mail, postage and charges prepaid and addressed to the appropriate individual, or (4) the date that notice is sent by electronic facsimile transmission if a signed original is concurrently mailed as provided herein.
- 49.9 *EMERGENCIES:* In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. The Contracting Officer shall, at the Contracting Officer's discretion, award the Contractor additional compensation or an extension of the Contract Time as a result of such emergency action.
- 49.10 *TITLES, HEADINGS & SUBHEADINGS:*  
The titles, headings and subheadings of Articles and Paragraphs contained in this Agreement are provided only as a matter of convenience and shall have no legal bearing on the interpretation of this Agreement.
- 49.11 *COUNTERPARTS:*  
This Agreement may be executed at different times and in any number of counterparts, each of which will be deemed an original document, but all of which will constitute a single document.
- 49.12 *INDEMNIFY AND HOLD HARMLESS:*  
The Contractor agrees to indemnify and hold harmless HAKC, HAKC's directors commissioners, officers, managers, and employees against any and all claims, demands, losses and liabilities (including attorney's fees, costs and expenses of defending against such claims) arising out of any act or omission determined to constitute negligence, recklessness, or willful misconduct by Contractor or Contractor's agents, employees, subcontractors, representatives, and assigns in the performance of this Agreement.

49.13 *CHOICE OF LAW/CHOICE OF FORUM:*

The parties agree that the laws of the State of Missouri and any applicable federal statutes, laws, and regulations shall govern this Agreement. The parties further agree that a court of competent jurisdiction within Jackson County, Missouri, shall have exclusive jurisdiction over all causes of action asserted by or against the HAKC that arise out of or relate to this Agreement.

IN WITNESS WHEREOF, EACH PARTY HAS CAUSED THIS INSTRUMENT TO BE SIGNED ON ITS BEHALF BY ITS DULY-AUTHORIZED AGENT, AFTER HAVING READ THIS AGREEMENT THE TERMS AND THE CONSEQUENCES THEREOF.

HOUSING AUTHORITY OF KANSAS CITY, MISSOURI

By: \_\_\_\_\_  
XXX, Executive Director

Date: \_\_\_\_\_, 2018\_\_

and XXX

By: \_\_\_\_\_  
XXX

Date: \_\_\_\_\_, 2018\_\_

Tax ID Number: