

**EXHIBIT E**

**“SAMPLE”**

**AHA CONSTRUCTION SERVICES CONTRACT**

**HOUSING AUTHORITY OF THE CITY OF ALAMEDA  
CONSTRUCTION SERVICES AGREEMENT**

This Construction Services Agreement (this "Agreement") is entered into as of [\_\_\_\_\_, 2023 (the "Effective Date"), by and between the Housing Authority of the City Alameda, a public body, corporate and politic ("Authority"), and [\_\_\_\_\_, a [\_\_\_\_\_] ("Contractor," and together with Authority, collectively, the "Parties"), with reference to the following facts:

**RECITALS**

A. These Recitals refer to and utilize certain capitalized terms that are defined in Article 1 of this Agreement. The Parties intend to refer to those definitions in connection with the use of capitalized terms in these Recitals.

B. On [\_\_\_\_\_, 2023, Authority issued the RFP for the Work. Thereafter, on [\_\_\_\_\_, 2023, Authority selected Contractor to perform the Work in accordance with the RFP.

C. Contractor has represented to Authority that Contractor has the necessary skill and expertise to perform the Work.

D. The Parties wish to enter into this Agreement to memorialize their agreement as to the specific requirements regarding the renovation and modernization project at the Property.

NOW, THEREFORE, the Parties agree as follows:

**ARTICLE 1**

**PURPOSE; DEFINITIONS**

Section 1.1 Purpose.

The purpose of this Agreement is to authorize Contractor to take actions necessary to perform the Work on the Property. Contractor hereby agrees to perform the Work in compliance

with the terms and conditions of this Agreement, within the time periods provided by the Schedule, and for the costs set forth on the Contractor Schedule of Values.

Section 1.2 Definitions.

The following capitalized terms have the meanings set forth in this Section 1.2 wherever used in this Agreement, unless otherwise provided:

(a) "Acceptance Certificate" shall have the mean set forth in Section 2.9(b) of this Agreement.

(b) "Agreement" shall mean this Construction Services Agreement and all exhibits.

(c) "Application for Payment" shall have the meaning set forth in Section 3.3(b) of this Agreement.

(d) "Architect" shall mean [\_\_\_\_\_], a [\_\_\_\_\_].

(e) "Authority" shall mean the Housing Authority of the City of Alameda, a public body, corporate and politic, its successors and assigns.

(f) "Change Order" shall have the meaning set forth in Section 2.11 of this Agreement.

(g) "City" shall mean the City of Alameda, California.

(h) "Contract Documents" shall mean this Agreement (including all exhibits attached hereto), the General Conditions, and the Plans.

(i) "Contracting Officer" shall have the meaning set forth in Section 5.7 of this Agreement.

(j) "Contractor" shall mean [\_\_\_\_\_], a [\_\_\_\_\_].

(k) "Contract Sum" shall have the meaning set forth in Section 3.1(a) of this Agreement.

(l) "Contract Time" shall have the meaning set forth in Section 2.9(b) of this Agreement.

(m) "Cost of the Work" shall mean the costs and expenses incurred by, or on behalf of, Contractor in connection with the performance of the Work, as more particularly described in Section 3.1 of this Agreement.

- (n) "DIR" shall mean the State of California Department of Industrial Relations.
- (o) "Effective Date" shall have the meaning set forth in the first paragraph of this Agreement.
- (p) "General Conditions" shall mean Form HUD-5370 (11/20/2023), General Conditions for Construction Contract, attached to this Agreement as Exhibit E.
- (q) "Guaranteed Maximum Price" shall have the meaning set forth in Section 3.1(a) of this Agreement.
- (r) "HUD" shall mean the United States Department of Housing and Urban Development.
- (s) "Notice to Proceed" shall mean the notice to be issued by Authority to Contractor to establish the date for the commencement of the Work.
- (t) "Parties" shall mean, collectively, Authority and Contractor.
- (u) "Party" shall mean either Authority or Contractor.
- (v) "Plans" shall mean the plans and specifications as set forth on Exhibit D.
- (w) "Potential Claimants" shall have the meaning set forth in Section 3.4(a)(iii) of this Agreement.
- (x) "Property" shall mean the real property located in the City of Alameda commonly known as [\_\_\_\_\_], owned by Authority, on which Contractor shall perform the Work.
- (y) "Residential Tenants" shall have the meaning set forth in Section 2.7(a)(i) of this Agreement.
- (z) "Retention Amount" shall have the meaning set forth in Section 3.3(a) of this Agreement.
- (aa) "RFP" shall mean the Request for Proposals, issued by Authority on [\_\_\_\_\_], 2023, and Contractor's response, dated [\_\_\_\_\_], 2023, each of which are attached to this Agreement as Exhibit L, and incorporated into this Agreement by this reference.
- (bb) "Schedule" shall mean the schedule for performance of the Work, attached to this Agreement as Exhibit K, as the Parties may revise from time to time, pursuant to a Change Order.

(cc) "Section 3" shall mean Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and its implementing regulations at 24 CFR Part 75.

(dd) "Section 3 Certification" shall mean Contractor's certification regarding Section 3 compliance, a form of which is attached to this Agreement as Exhibit I.

(ee) "Section 3 Policy" shall mean Authority's policy for complying with Section 3, attached to this Agreement as Exhibit I.

(ff) "Subcontractor" shall mean any subcontractor under direct contract with Contractor as more particularly described in Section 2.4(a) of this Agreement.

(gg) "Substantial Completion" shall mean the stage in the progress of the Work where the work is sufficiently complete in accordance with this Agreement and all other Contract Documents so that the work may be utilized for its intended use as evidenced by the Acceptance Certificate.

(hh) "Work" shall mean, collectively: (i) [\_\_\_\_\_] on the Property, as more particularly set forth in Exhibit A, and as set forth on the Plans; and (ii) all other construction and services required by the Contract Documents or reasonably inferable by Contractor as necessary to produce the results intended by the Contract Documents (including all labor, materials, equipment, and services provided or to be provided by Contractor to fulfill Contractor's obligations).

### Section 1.3 Exhibits.

The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A: Scope of Work

Exhibit B: List of Subcontractors

Exhibit C: Contractor Schedule of Values; Qualifications and Exclusions

Exhibit D: List of Plans

Exhibit E: General Conditions for Construction Contract (Form HUD-5370)

Exhibit F: Insurance Requirements

Exhibit G: Davis Bacon Wage Rates

Exhibit H: AHA Section 3 Policy

Exhibit I: Section 3 Certification

Exhibit J: Notice for Affirmative Action to Ensure Equal Employment Opportunity under Executive Order 11246, and the Standard Federal Equal Employment Opportunity Construction Contract Specifications

Exhibit K: Schedule

Exhibit L: Documents incorporated for reference from RFP

## **ARTICLE 2**

### **CONSTRUCTION SERVICES**

#### Section 2.1 Scope of Work.

Contractor shall perform the Work as set forth in the Plans provided to Contractor by Authority.

#### Section 2.2 Responsibility for Performance of the Work.

(a) Contractor Responsibilities. Contractor shall manage all activities associated with the performance of the Work in accordance with this Agreement, including, but not limited to, the following activities:

(i) In addition to the other requirements set forth herein, Contractor shall employ a full-time superintendent to be on the jobsite at all times during the progress of the Work. The superintendent shall represent Contractor, and communications given to the superintendent shall be as binding as if given to Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. Authority shall have the right to approve the superintendent. If Contractor removes the superintendent, Authority shall have the right to approve the replacement superintendent, which shall not be unreasonably denied.

(ii) Contractor shall conduct weekly job site meeting with Authority's representative to keep Authority informed of the progress of the Work. Contractor shall provide Authority copies of minutes of any job site meetings.

(iii) Contractor shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Agreement.

(iv) Subject to Authority's obligation to disburse funds set forth in Section 3.3(c) of this Agreement, Contractor shall make, or cause to be made, payment of all monies due and legally owing to all persons doing any work, furnishing any materials or supplies, or renting any equipment to Contractor or any of its Subcontractors in connection with performance of the Work, within ten (10) calendar days following receipt of payment from Authority.

(v) Contractor shall be responsible to Authority for acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of Contractor or any of its Subcontractors and for any damages, losses, costs, expenses, including but not limited to attorneys' fees resulting from such acts and omissions. In accordance with Section 1810 of the California Labor Code, Contractor acknowledges that eight (8) hours of labor constitutes a legal day's work.

In no event shall Contractor contract with any party which has been debarred or suspended by HUD under 29 CFR 5.12 or by the State of California's Department of Industrial Relations, Division of Labor Standards Enforcement (DLSE). A current list of individuals the DLSE is available at <https://www.dir.ca.gov/dlse/debar.html>.

(b) Use of Site. Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Property by Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Property. Contractor shall take reasonable precautions and measures to protect materials and equipment stored at the Property from weather, theft, and damage, and Contractor shall be solely liable for any loss or damage to such materials and equipment. Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such manner that public areas adjacent to the Property of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

### Section 2.3 Contractor Representations and Warranties.

(a) Representations and Warranties. Contractor represents and warrants the following to Authority (in addition to any other representations and warranties contained in this Agreement) as a material inducement to Authority to execute this Agreement:

(i) Contractor, and to the best of Contractor's knowledge, its Subcontractors, are financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;

(ii) Contractor is able to furnish the plant, tools, materials, supplies, equipment, and labor itself or through its Subcontractors required to complete the Work and perform its obligations hereunder, and has sufficient experience and competence to do so;

(iii) Contractor is authorized to do business in the State of California and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over Contractor and over the Work. Contractor's license number is [\_\_\_\_\_];

(iv) Contractor's execution of this Agreement and performance thereof is within Contractor's duly authorized powers;

(v) Contractor is a sophisticated contractor who possesses a high level of experience and expertise in the business administration, construction, construction management, and superintendence of projects of the size, complexity, and nature of this particular project, and will perform the Work with the care, skill, and diligence of such a contractor;

(vi) Except as disclosed to Authority in writing, there are no claims, actions, investigations, suits, or proceedings pending affecting Contractor's performance under the Contract Documents; and

(vii) All financial information delivered to Authority, including all information relating to the financial condition of Contractor or any of its partners, joint venturers, or members (as applicable), fairly and accurately represents the financial condition being reported on as of its date. All such information is prepared in accordance with generally accepted accounting principles consistently applied, unless otherwise noted. There has been no material adverse change in the financial condition of any of the persons described above-reported at any time to Authority, except as previously disclosed to Authority in writing in later financial information and found acceptable to Authority in its sole and absolute discretion.

(b) Survival. The foregoing representations and warranties shall survive the execution and delivery of this Agreement and any termination of this Agreement.

#### Section 2.4 Subcontractors.

(a) List of Subcontractors. Contractor's list of approved Subcontractors for the performance of the Work, and each of the Subcontractor's license numbers, is set forth on Exhibit B. In the event Contractor desires to replace any Subcontractor pursuant to Section 4107 of the California Public Contract Code, then Contractor shall notify Authority in writing, and Authority shall then follow the process set forth in Section 4107(a) of the California Public Contract Code. Thereafter, if requested by Authority in writing, Contractor shall provide Authority with a draft copy of its form subcontract, and disclose to Authority the name, trade, and subcontract amounts for each subcontractor prior to the proposed subcontractor's performance of any portion of the Work. Subcontractors shall have the required licenses and expertise necessary to perform the proposed subcontract work. Authority will promptly reply to Contractor in writing stating whether or not Authority, after due investigation, has reasonable objection to any such proposed person or entity. Provided Authority has not objected to the proposed subcontractor, such person or entity shall be deemed a "Subcontractor." Contractor shall not contract with a proposed person or entity to whom Authority has made reasonable and timely objection, or an entity that has been debarred by the DIR. If any contract between Contractor and a Subcontractor is materially altered so that it differs from the form subcontract provided to Authority with regard to terms other than (1) the description of the Work to be performed pursuant to the subcontract, and (2) the subcontract price, that subcontract shall be submitted to Authority for its review prior to the commencement of applicable portion of the Work.

(b) Subcontracts. By appropriate agreement Contractor shall require each Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to Contractor by terms of this Agreement and to assume toward Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's work, which Contractor, by this Agreement, assumes toward Authority. Each subcontract shall, among other matters: (i) require that the work be performed in accordance with the requirements of this Agreement; (ii) require the Subcontractor to carry and maintain liability insurance in accordance with this Agreement; and, (iii) shall specifically provide that Authority is an intended third-party beneficiary of such subcontract and that the Subcontractor recognizes the rights of Authority to take an assignment of its subcontract after termination of this Agreement by Authority on default of Contractor.

#### Section 2.5 Payment and Performance Bonds.

Prior to commencement of the Work, Contractor shall deliver to Authority copies of labor and material (payment) bonds and performance (general contractor bond) bonds for the Work in an amount equal to one hundred percent (100%) of the scheduled costs of the Work. Said bonds shall comply with the requirements of Section 9550 *et seq.* of the California Civil Code and shall be issued by an insurance company which is licensed to do business in California and has a rating equivalent to AAA or AA+ by an insurance company listed in the current year's list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department, and for amounts which are not in excess of the acceptable amount set forth on such list for the respective surety. The bonds shall name Authority as a co-obligee or assignee.

#### Section 2.6 Right of Entry; Job Site Facilities.

(a) Right of Entry. Authority hereby grants Contractor a right to enter the Property for the purpose of performing the Work. This right of entry may be exercised by Contractor, and its employees, agents, and Subcontractors. This right of entry will terminate upon the sooner to occur of: (i) completion of the Work; or (ii) the occurrence of an event of default under this Agreement.

(b) No Liens. Contractor and all Subcontractors and all material suppliers are prohibited from placing any liens on the Property; provided, however nothing in this Section 2.6(b) shall be deemed to prohibit the filing of a stop notice.

(c) Signs. Subject to prior approval of Authority as to size, design, type and location, and to local regulations, Contractor and its Subcontractors may erect temporary signs for purposes of identification and, to the extent applicable, controlling traffic. Contractor shall furnish, erect, and maintain such signs as may be required by safety regulations and as necessary to safeguard life and property. Contractor shall comply with all applicable CAL OSHA standards.

(d) Job Site Facilities. In addition to the requirements set forth in Section 17 of the General Conditions, Contractor may provide a jobsite trailer and portable sanitary



facilities. This office will be located so as to cause no interference to any Work to be performed on the Property. Contractor shall consult with Authority with regard to location. Unless otherwise agreed to by the Parties, upon completion of the Work, Contractor shall remove all such temporary structures and facilities from the Property. On-site storage will be permitted, as a convenience to Contractor, in areas designated by Authority for such purposes. Contractor shall take reasonable security measures to protect against theft and vandalism. Contractor is responsible for Contractor owned tools and equipment. Except for damage due to Contractor's negligence or willful misconduct, damage or vandalism to the Improvements, products at the Property, in storage or in transit shall be covered by the builder's risk policy, described in Section 7.19 of this Agreement. Contractor may, at its option and expense, rent off-site facilities for the storage and securing of its materials.

Section 2.7 Safety Precautions and Programs.

(a) Contractor Responsibility. In addition to the requirements set forth in Section 13 of the General Conditions, Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work and for providing safe conditions for the performance of the Work. Authority shall have no liability or responsibility for the physical condition or safety of the site or any improvements made by Contractor and located on the Property until acceptance of the Work by Authority as evidenced by the Acceptance Certificate more particularly described in Section 2.9(b) of this Agreement. Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

(i) employees at the Property and other persons who may be affected thereby, including, but not limited to the tenants of the residential units located at the Property (collectively, the "Residential Tenants");

(ii) the materials and equipment to be used in connection with the performance of the Work, whether in storage on or off the site, under care, custody or control of Contractor or Contractor's Subcontractors or sub-subcontractors; and

(iii) other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Work.

(b) Residential Tenants. Contractor acknowledges that the Residential Tenants shall be occupying the portions of the Property above the portions of the Property where the Work will be performed. Contractor shall take all reasonable precautions to ensure that the Work is performed in such a manner so as not to endanger, threaten, or impair the safety of Residential Tenants or their guests and invitees, and shall construct and maintain reasonable safeguards as required by the condition and progress of the Work. Contractor shall take all reasonably available efforts to eliminate unnecessary noise, dust, or obstructions during the performance of the Work.

(c) Utilities. In the event that the performance of the Work requires existing utilities (including, but not limited to, water, heat, electricity, or telecommunications) to be shut-off, then Contractor shall not cause such utilities to be shut off until: (i) Contractor has notified Authority of such requirement, and (ii) Authority has notified the Residential Tenants of such requirement in accordance with the Residential Tenants' leases. In such event Contractor shall use commercially reasonable efforts to minimize the time period that any utility serving the Property is shut-off.

(d) Notices. Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. Contractor shall erect and maintain, as required by existing conditions and performance of the Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

(e) Explosives. When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for performance of the Work, Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. Contractor shall also give Authority reasonable advance notice.

(f) Damage. Contractor shall promptly remedy damage and loss to property referred to in Sections 2.7(a)(ii) and (iii) above, to the extent caused by Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which Contractor is responsible under Sections 2.7(a)(ii) and (iii), except damage or loss attributable to acts or omissions of Authority and not attributable to the fault or negligence of Contractor.

(g) No Overloading. Contractor shall not load or permit any part of the Work or site to be loaded so as to endanger its safety.

(h) Suspension. When all or a portion of the Work is suspended for any reason, Contractor shall securely fasten down all coverings and protect the Improvements, as necessary, from injury by any cause, including, but not limited to rain or other weather conditions.

(i) Notice to Authority. Contractor shall promptly report in writing to Authority all accidents arising out of or in connection with the Work that caused death, serious personal injury, or serious property damage (other than the demolition of any existing improvements on the Property as set forth in the Plans), giving full details and statements of any witnesses. In addition, if death, serious personal injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to Authority.

## Section 2.8 Conditions Precedent to Commencement of the Work.

(a) Conditions. Contractor shall cause the commencement of Work by no later than the date set forth in a Notice to Proceed issued by Authority; provided, however,

Authority shall not be under any obligation to issue a Notice to Proceed until satisfaction of the following conditions precedent:

(i) There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under this Agreement.

(ii) Contractor has furnished Authority with evidence of the bonds meeting the requirements of Section 2.5 of this Agreement.

(iii) Contractor has executed and delivered to Authority all documents, instruments, and policies required by Authority pursuant to this Agreement.

(iv) Contractor has furnished Authority with evidence of the insurance coverage meeting the requirements of Section 2.19 of this Agreement.

(v) Contractor has secured all necessary permits, fees and licenses as set forth in Section 2.12(a) of this Agreement.

(b) Termination. If Contractor has not satisfied the conditions precedent set forth in this Section 2.8 by the earlier of: (i) the date set forth in the Notice to Proceed; or (ii) [\_\_\_\_\_], 2023, then such failure shall constitute a default as set forth in Section 4.2 of this Agreement, and Authority may, in its sole discretion, terminate this Agreement. In the event of such termination neither Party shall have any continuing liability or obligations except for continuing indemnities provided elsewhere in this Agreement. In the event of such termination, the Parties agree and acknowledge that, for the avoidance of doubt, Section 34 of the General Conditions shall not apply.

#### Section 2.9 Completion of the Work.

(a) Compliance with Schedule. Contractor shall perform the Work in strict accordance with the Schedule submitted to and accepted by Authority. Contractor shall have the sole and exclusive responsibility for completing the Work according to the Schedule. Failure to materially comply with the Schedule shall be considered a breach of this Agreement. Any proposed revisions to the Schedule which would affect Contract Time shall be submitted by Contractor pursuant to the Change Order procedure set forth in Section 2.11 of this Agreement. If Authority reasonably determines that the performance of the Work has not materially reached the level of completion set forth in the Schedule or the Contract Documents (taking into account any corrective schedule action(s) proposed by Contractor including, but not limited to, resequencing tasks or lags to obtain compliance with the Schedule), then Authority shall have the right to require Contractor to take all measures necessary to expedite the Work in order to materially comply with the Schedule including, but not limited to, working additional shifts or overtime, supplying additional labor, equipment, facilities, and other similar measures. Authority's right to require such measures is solely for the purpose of ensuring Contractor's compliance with the Schedule. Contractor shall not be entitled to an adjustment in the Contract Sum in connection with such measures required by Authority. Authority may exercise the rights

furnished in this Section 2.9(a) as frequently as Authority deems necessary to ensure that Contractor's performance of the Work will comply with the Contract Time.

(b) Acceptance Certificate. Subject to Section 32(b) of the General Conditions, Contractor shall diligently prosecute the Work to completion, and shall cause the Substantial Completion of the Work as set forth in the Schedule, and within the time period established in Section 25 of the General Conditions (the "Contract Time"). Upon Substantial Completion of the Work Contractor shall submit to Authority a certification from Architect stating that the Work has been completed in accordance with the Plans. Upon (1) submission of Architect's certification, (2) inspection by Authority and a determination by Authority in its reasonable discretion Contractor has reached Substantial Completion in compliance with this Agreement, and (3) at Authority's discretion, completion of an independent cost certification of the work to be prepared and paid for by Authority, Authority shall certify in writing that the Work is substantially complete by executing and recording against the Property a notice of completion and acceptance of work (the "Acceptance Certificate").

#### Section 2.10 Delay and Extension of Time.

(a) Delay. Except as set forth below, the occurrence of events that delay the Work shall not excuse Contractor from achieving Substantial Completion within the Contract Time. The Contract Time may be extended by Change Order for each calendar day Contractor is delayed in the commencement or progress of the Work provided that Contractor demonstrates that the following conditions have been met:

- (i) At the time the event causing the delay commences, no event of default (as described in Section 4.2 of this Agreement) exists;
- (ii) Contractor demonstrates that the delay will have a material adverse impact on the critical path of the then current Schedule;
- (iii) The delay is not caused by Contractor;
- (iv) The delay could not be (or have been) limited or avoided by Contractor's timely notice to Authority of the delay or reasonable likelihood that the delay would occur;
- (v) The delay is of a duration of more than one calendar day; and
- (vi) The delay is caused by one, or more, of the events or conditions set forth in Section 32(b)(1) of the General Conditions.

(b) Change Order. Provided that such conditions set forth above are satisfied, the Contract Time may be extended by Change Order as set forth in Section 2.11 of this Agreement.

#### Section 2.11 Change Orders.

Changes in the Work may be accomplished after execution of this Agreement, and without invalidating this Agreement by Change Order, subject to the limitations stated in Section 29 of the General Conditions (each, a "Change Order"). Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the Contract Time (if any). Contractor shall use the AIA Change Order form, or such other form of change order reasonably acceptable to Authority, and shall report requests for Change Orders and Change Order status monthly.

Section 2.12 Work Pursuant to Permits, Plans and Laws.

(a) Permits. In accordance with Section 12(b) of the General Conditions, Contractor shall obtain, and pay all costs for, all applicable permits, licenses, and authorizations necessary for the Work. The Work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction over the Work.

(b) Plans and Laws. Contractor shall cause all the Work performed in connection with this Agreement to be performed in compliance with: (i) the Plans, as approved by the City Building Department, and all governmental approvals and permits; (ii) all applicable laws, ordinances, rules and regulations of federal, state, or municipal governments or agencies now in force or that may be enacted hereafter, including (without limitation and where applicable) prevailing wage provisions of the federal Davis-Bacon Act (as further set forth in Section 46 of the General Conditions), and its implementing rules and regulations, and the prevailing wage provisions of the Section 1720, et seq. of the California Labor Code; and (iii) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. In accordance with Section 1104 of the California Public Contract Code, Contractor shall review the Contract Documents, and, in the event Contractor discovers any error or omission in the Contract Documents with applicable codes, then Contractor shall promptly notify Authority of such error or omission.

(c) Davis-Bacon Wages and California Prevailing Wages; Payroll Compliance.

(i) The applicable Davis Bacon wage rates are attached to this Agreement as Exhibit G. A copy of the wage decision and any additional classifications shall be posted by Contractor at the Property in a prominent place readily accessible to the workers. Contractor shall and shall cause Subcontractors to pay the higher of: (1) the wages set forth in Exhibit G; or (2) prevailing wages in the performance of the Work as those wages are determined pursuant to Sections 1720 et seq. of the California Labor Code. Regardless of the payment of wages set forth in Exhibit G or pursuant to Sections 1720 et seq. of the California Labor Code, Contractor shall, and shall cause any Subcontractors to: (A) employ apprentices as required by Sections 1777.5 et seq. of the California Labor Code, and the implementing regulations of the DIR, and to comply with the other applicable provisions of Sections 1720 et

seq. and Sections 1777.5 et seq. of the California Labor Code, and implementing regulations of the DIR; (B) keep and retain, and shall cause any Subcontractor to keep and retain, such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Sections 1720 et seq. of the California Labor Code, and apprentices have been employed are required by Sections 1777.5 et seq. of the California Labor Code; (C) post at the Property the applicable prevailing rates of per diem wages (Copies of the currently applicable current per diem prevailing wages are available from the DIR); (D) register, and cause the Subcontractors rehabilitating the Property to be registered as set forth in Sections 1725.5 of the California Labor Code; (E) cause its Subcontractors, in all calls for bids, bidding materials and subcontract documents to specify that: (i) no subcontractor may be listed on a bid proposal nor be awarded a contract unless registered with the DIR pursuant to Sections 1725.5 of the California Labor Code; and (ii) the Work is subject to compliance monitoring and enforcement by the DIR; (F) provide Authority all information required by Sections 1773.3 of the California Labor Code, as set forth in the DIR's online form PWC-100 within two (2) calendar days after the Effective Date ; (G) post, or cause its Subcontractors to post job site notices, as prescribed by regulation by the DIR; and (H) cause its Subcontractors to furnish payroll records required by Sections 1776 of the California Labor Code directly to the Labor Commissioner, at least monthly in the electronic format prescribed by the Labor Commissioner.

(ii) Each Subcontractor and any lower tier subcontractor shall submit through Contractor to Authority weekly certified payrolls for each work week from the time work is started until the Work is completed setting forth, among other things, that each worker has been paid in accordance with Section 2.12(c)(i) of this Agreement. Weekly payrolls shall be completed and submitted promptly to Authority, preferably no later than seven (7) working days following completion of the work week. Monthly progress payments will not be released until all payroll reports are up to date. All workers are to be paid not less than once per week.

(d) Department of Labor Notification. Within ten (10) calendar days of contract award (including subcontracts) for each contract of Ten Thousand and No/100ths Dollars (\$10,000.00) or more, Authority is required to send a notice of contract award to the Regional Office of Federal Contract Compliance Programs of the Department of Labor. This notification is required by Executive Order 11246, as amended, and shall include the name, address, and telephone number of the contractor/subcontractor; the employer identification number; the dollar amount of the contract; the estimated start and completion dates; and the project number(s) and community in which the project(s) is located. The above information shall be submitted to Authority, by Contractor, within two (2) working days of receipt of such information as it applies to subcontractors.

#### Section 2.13 Authority's Right to Stop the Work.

If Contractor fails to correct defective work as required by Article 23 of the General Conditions or fails to carry out the Work in accordance with the Contract Documents, Authority by a written order signed by the Contracting Officer, may order Contractor to stop the Work or any portion thereof until the cause for such order has been eliminated.

#### Section 2.14 Authority's Right to Carry Out the Work.

If Contractor defaults or neglects to carry out the work in accordance with this Agreement and fails within seven (7) calendar days after receipt of written notice from Authority to commence and continue correction of such defects or neglect with diligence and promptness, Authority may, after seven (7) calendar days following receipt by Contractor of an additional written notice and without prejudice to any other remedy Authority may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued, deducting from the payments then or thereafter due Contractor, the cost of correcting such deficiencies, including compensation for Architect's additional services made necessary by such default, neglect or failure. If the payments then or thereafter due Contractor are not sufficient to cover such amount, Contractor shall pay the difference to Authority.

Section 2.15 Section 3 Compliance.

Contractor shall comply with Sections 38, 39, and 40 of the General Conditions regarding Section 3 and the requirements set forth in AHA Section 3 Policy.

Section 2.16 Equal Opportunity.

Contractor, for itself and its successors and assigns, and transferees agrees that in the performance of the Work it shall comply with the requirements of Section 39 of the General Conditions regarding Equal Employment Opportunity.

Section 2.17 Minority and Women-Owned Business Participation.

Attached to this Agreement as Exhibit J is the Notice for Affirmative Action to Ensure Equal Employment Opportunity under Executive Order 11246, and the Standard Federal Equal Employment Opportunity Construction Contract Specifications. It is the policy of Authority to take positive steps to maximize the utilization of minority and women business enterprises in all contract activity administered by Authority.

Section 2.18 Hazardous Materials.

(a) Contractor Responsibility. Contractor shall not permit any hazardous material or substance to be brought to, or used on, the Property except to the extent such hazardous material or substance is necessary to and customarily used in the projects like the Work. Any hazardous material or substance brought or used on the Property by Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible, shall be used, stored and disposed of in compliance with all applicable laws related to such hazardous materials or substances. Any damage to the Property and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of Contractor or Contractor's Subcontractors or sub-subcontractors; and other property at the Property or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Work, resulting from the improper storage or use of hazardous materials or substances, shall be remedied by Contractor at its sole cost and expense in accordance with applicable laws. Contractor shall provide Authority notice of any release of hazardous materials or substances at

the Property. In no event, however, shall Authority have any responsibility for any substance or material that is brought to the Property by Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. Contractor agrees not to import any fill that are hazardous, toxic or made up of any items that are hazardous or toxic.

(b) Compliance with Laws. If Contractor's scope of work include the off-haul or contaminated soil, hazardous materials (including asbestos) remediation, or mold remediation, then Contractor shall comply with the requirements of all applicable federal, state and local laws, and any environmental reports provided to Contractor by Authority, in the removal, transportation and disposal of the materials. Contractor shall obtain all necessary permits for any contaminated soil or hazardous materials or mold removal work. Contractor shall ensure that any Subcontractor performing any removal or remediation work possesses the necessary expertise, insurance and licenses. All contaminated and hazardous material shall be transported to an appropriately permitted facility. Contractor shall and shall cause any Subcontractors performing the removal and remediation work to take all necessary safety precautions during the performance of the Work including but not limited to necessary protection of surrounding areas to prevent the spread of contamination, and the protection of workers performing the removal and remediation work.

(c) Stop Work. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to polychlorinated biphenyl (PCB), but specifically excluding lead paint and asbestos (which remediation is contemplated as part of the Work), encountered on the Property by Contractor, Contractor shall, upon recognizing the condition, immediately stop the Work in the affected area and report the condition to Authority in writing.

(d) Rendered Harmless. In the event hazardous materials or substances are found to be present, then Contractor shall take such actions necessary to render such materials or substances harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of Authority and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished pursuant to a Change Order; provided, however, Authority shall have no obligation to execute a Change Order for: (i) any hazardous materials or substances that were previously disclosed to Contractor, prior to the Effective Date; (ii) any condition that does not differ materially from those conditions disclosed to Contractor; or (iii) any hazardous materials or condition known by Contractor.

#### Section 2.19 Insurance Requirements.

Contractor shall, and shall cause any Subcontractors performing any portion of the Work to maintain insurance of the types described in Exhibit F. The requirements set forth in Exhibit F supersede those set forth in Section 36 of the General Conditions.

#### Section 2.20 Contractor's Obligations regarding Mechanic's Liens and Stop Notices.



(a) Contractor's Obligation to Maintain Lien-Free Title. Provided that Authority has made payment of undisputed sums due and payable in accordance with this Agreement, if any claim of mechanic's lien or stop notice is filed or made against the real property in connection with the Work, Contractor shall: (i) immediately pay and fully discharge the mechanic's lien or stop notice claim; (ii) commence a civil action pursuant to Sections 9350 et seq. of the California Civil Code, for the summary determination of the mechanic's lien or stop notice; or (iii) may deliver to Authority a release of lien or stop notice by surety bond in a legally sufficient form and amount to discharge the mechanic's lien or stop notice. Contractor shall provide whatever documentation, deposits or surety is reasonably required by the title insurance company providing title insurance on the Work in order to obtain lien-free endorsements prior to Authority's payment of any payment, including any progress payment. If Contractor fails to promptly provide the documentation, deposits, records of payment or surety bonds required by this Section 2.20(a), Authority may: (1) obtain any deposits or surety; or (2) make payments to claimants against the Work, Contractor, Authority, in good faith, as reasonably required to release the mechanic's lien or stop notice claim. Authority may withhold the cost of obtaining such deposits or surety or of making such payments from any payment that would otherwise be due to Contractor. Failure of Authority to withhold any or part of any payment pursuant to this Section 2.20(a) shall not be a waiver of any right of Authority under the Contract. Withholding of any payment or part of any payment by Authority pursuant to this Section 2.20(a) shall not be a breach of this Agreement.

(b) Withholding of Payments Due to Claims of Subcontractors. Provided that Authority has made payment of undisputed sums due and payable in accordance with this Agreement, if any subcontractor, material supplier to the Work, or lower tier subcontractor or material supplier files or serves any claim or lien, stop notice, common count or other demand for payment against Authority, or the real property of the Work, Authority may either (1) withhold from any progress payment or other payment an amount up to one hundred fifty percent (150%) of the amount necessary to satisfy the claim, stop notice, common count, or other demand for payment, including all anticipated costs and fees related to the defense of such claim, including but not limited to attorneys' fees, or (2) release the progress payment or other payment. Failure of Authority to withhold any or part of a progress payment pursuant to this Section 2.20(b) shall not be a waiver of any right of Authority under this Agreement. Withholding of any payment by Authority pursuant to this Section 2.20(b) shall not be a breach of this Agreement.

### **ARTICLE 3**

#### **PAYMENT AND RECORD KEEPING REQUIREMENTS**

##### Section 3.1 Contract Sum; Guaranteed Maximum Price.

(a) Contract Sum. Authority shall pay Contractor the Contract Sum in current funds for Contractor's performance of the Work. The "Contract Sum" is the Cost of the Work as defined in this Article 3, plus the Contractor's Fee. The Contract Sum is based on Contractor's Schedule of Values, attached as Exhibit C to this Agreement and incorporated herein. Contractor's Schedule of Values sets forth that the Contract Sum shall not exceed

[ \_\_\_\_\_ ] and No/100ths Dollars [(\$ \_\_\_\_\_ .00)] (the "Guaranteed Maximum Price"), subject to any change order approved in writing by Authority in accordance with this Agreement.

(b) Contractor's Actual Costs. Costs as defined herein shall be actual costs paid by Contractor. All payments made by Authority pursuant to this Article 3, whether those payments are actually made before or after the Effective Date, are included within the Guaranteed Maximum Price; provided, however, that in no event shall Authority be required to reimburse Contractor for any portion of the Cost of the Work incurred prior to the issuance of the Notice to Proceed unless Contractor has received Authority's written consent prior to incurring such cost.

(c) No Duplication of Payment. Notwithstanding the breakdown or categorization of any costs to be reimbursed in this Article 3 or elsewhere, there shall be no duplication of payment in the event any particular items for which payment is requested can be characterized as falling into more than one of the types of compensable or reimbursable categories.

### Section 3.2 Conditions Precedent to Disbursement of Funds for the Work.

Authority shall not be obligated to make any payment to Contractor or take any other action under this Agreement unless the following conditions are satisfied prior to each such disbursement:

(a) No Default. There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under this Agreement.

(b) Payroll. Authority has received all payroll information required pursuant to Section 2.12(c) of this Agreement; provided, however, Authority shall withhold from any payment an amount proportionate to, or otherwise equal to, the missing payroll information. Authority shall not withhold the full amount of a payment due solely to Contractor's failure to deliver complete payroll information.

(c) Approved Application for Payment. Authority has received, and approved, the Application for Payment in the form set forth in Section 3.3 of this Agreement.

(d) Lien Releases. If requested by Authority, Contractor has provided Authority with waiver and releases from all contractors, Subcontractors, and material persons in such form as is acceptable to Authority including conditional waivers from all persons for whose work in the preceding month payment is sought, and unconditional waiver and releases from all persons for whose work payment has been made by Authority (or bonded around by Contractor in the event of a dispute between Contractor and a Subcontractor) in response to Contractor's Application for Payment.

### Section 3.3 Application for Payment Process.

(a) Submittal of Application for Payment. Authority shall provide payment to Contractor for the performance of the Work based upon a monthly Application for Payment from Contractor, and approved by Authority, in an amount equal to ninety-five percent (95.00%) of the requested payment amount, and shall retain the balance for payment in accordance with Section 3.4 of this Agreement (the "Retention Amount"), all subject to the requirements set forth in Section 27 of the General Conditions. In the event Authority disapproves a monthly Application for Payment, then Authority shall deliver a written notice of disapproval within seven (7) calendar days after Authority's receipt of the Application for Payment.

(b) Form of Application for Payment. In addition to the requirements set forth in Section 27 of the General Conditions (including Contractors certification requirement), each of Contractor's application for payment (an "Application for Payment") shall: (i) set forth the proposed use of funds consistent with the Contractor Schedule of Values, including the Cost of the Work to be funded; (ii) contain sufficient detail and with sufficient supporting documentation to permit Authority to confirm that the work to be funded by the draw request has been performed, and that Authority may accept such work in accordance with the guidelines established by HUD to the extent applicable; and (iii) be set forth on the AIA form for application of payment, or such other form mutually acceptable to the Parties.

(c) Payment by Authority. Authority shall pay each approved Application for Payment within thirty (30) calendar days after receipt. Notwithstanding any provision of this Agreement to the contrary, including but not limited to Section 27 of the General Conditions, if Authority fails to pay an approved Application for Payment within thirty (30) calendar days after receipt of an undisputed and properly submitted Application for Payment from Contractor, then Authority shall pay interest to Contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure. Contractor and Authority agree and acknowledge that this provision constitutes a summary of Section 20104.50 of the California Public Contract Code.

#### Section 3.4 Conditions Precedent to Release of Retention Amount.

(a) Conditions Precedent. Authority shall not be obligated to make the disbursements of the Retention Amount or take any other action under this Agreement unless the following conditions are satisfied prior to such disbursement:

(i) There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under this Agreement.

(ii) All labor has been performed in a good workperson-like manner consistent with this Agreement.

(iii) To the maximum extent permitted by law, all persons, firms and corporations, including all laborers, material persons, suppliers and Subcontractors who have furnished equipment, supplied materials or performed work for or in connection with the Work, (the "Potential Claimants"), have been paid or will be paid in full out of the remaining retained percentage; and those persons, firms and corporations have submitted their final statements with

an unconditional waiver and release upon final payment. Contractor shall make these waivers available for inspection by Authority. In the event a dispute has arisen between Contractor and one of the parties listed above which prevents Contractor from obtaining the waiver of rights from that party, Contractor may satisfy the requirements of this Section 3.4(a)(iii) by supplying a payment bond issued by a surety licensed to do business in the State of California and acceptable to Authority to remove the effect of any claim against the Property and agree to defend and indemnify Authority against all actions filed by persons who have supplied materials to or performed work for or in connection with this Agreement.

(iv) All portions of the Work (that are the responsibility of Contractor) requiring inspection by any governmental authority have been inspected and approved by such authority and all requisite certificates of occupancy, approvals, licenses and permits (if applicable) that are the responsibility of Contractor, have been issued.

(v) To the extent applicable, Authority has received operating manuals and assignments of warranties of Contractor, all Subcontractors and materialpersons.

(vi) Thirty (30) calendar days have elapsed from Authority's recordation of the Acceptance Certificate.

(vii) If requested by Authority, Contractor has delivered to Authority a final accounting of the actual Cost of the Work, and the Savings, if any, and/or Authority's accountant has completed a cost certification for the Work.

(viii) All items on the punch-list related to the Work have been completed and accepted by Authority, and Authority has issued an Acceptance Certificate pursuant to Section 2.9 of this Agreement and Section 20 of the General Conditions.

(b) Early Release. Notwithstanding the above, a portion of the Retention Amount may be released to certain Potential Claimants performing work early in the Schedule subject to the approval of Authority, in its sole discretion, prior to satisfaction of all conditions set forth in this Section 3.4 of this Agreement if such Potential Claimant has: (i) fully performed all portions of the Work to be performed by such Potential Claimant; (ii) delivered to Contractor, or to Authority, all applicable operating manuals and assignments of warranties, and other documentation reasonably requested by Authority in connection with such Potential Claimant's work; and (iii) provided Authority unconditional releases for all amounts owed to the Potential Claimant.

### Section 3.5 Assignment of Claims by Contractor.

In accordance with Section 7103.5 of the California Public Contract Code, Contractor and/or Subcontractor(s), if any, hereby assign to Authority all rights, title, and interest in and to all causes of action each may have under Section 4 of the Clayton Act (15 U.S.C. Section 15), as may be amended, or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 Division 7 of the California Business and Professions Code) as may be amended, arising from purchases of goods, services, or materials pursuant to this Agreement or the applicable

subcontract. This assignment shall be made and become effective at the time Authority tenders final payment to Contractor (or final payment is tendered to the applicable Subcontractor), in accordance with this Agreement, without further acknowledgement, or action, by the Parties. Such assignment shall survive the expiration or termination of this Agreement.

Section 3.6 Information.

Contractor shall provide any information reasonably requested by Authority in connection with the performance of the Work, including (but not limited to) any information required by HUD.

**ARTICLE 4**  
**TERM; DEFAULT; REMEDIES**

Section 4.1 Term.

The term of this Agreement shall extend from the Effective Date until the earlier of: (a) termination following an uncured default under this Agreement; or (b) Authority's written acceptance of the Work as completed through the issuance of an Acceptance Certificate; provided, however the indemnification and warranty provisions set forth in this Agreement and/or the General Conditions shall survive the expiration of the term.

Section 4.2 Events of Default by Contractor.

(a) Events of Default. Contractor shall be in default under this Agreement, if Contractor, after five (5) calendar days' notice and opportunity to cure:

(i) subject to Section 32(b) of the General Conditions, refuses or fails to prosecute the Work, or any separable part of it, with the diligence that will insure its Substantial Completion within the Contract Time, or fails to complete the Work within this time;

(ii) is adjudged bankrupt or there is a general assignment for the benefit of creditors or the appointment of a receiver due to insolvency;

(iii) refuses or fails to supply sufficient skilled workers or materials;

(iv) repeatedly fails to make prompt payment to Subcontractors for materials or labor;

(v) repeatedly or materially disregards the applicable laws, local ordinances, or Authority instructions; or

(vi) is in substantial breach of any provision of this Agreement.

(b) Remedies. Following such default by Contractor, Authority shall have the right to pursue all of the remedies set forth in Section 4.3 of this Agreement; provided, however,

in the event of default under Section 4.2(a)(i) of this Agreement, Authority shall enforce the remedy set forth in Section 4.3(d) of this Agreement, solely in connection with Contractor's failure to timely complete the Work.

### Section 4.3 Remedies.

(a) Authority's Rights. The occurrence of any default by Contractor set forth in Section 4.2 of this Agreement, shall give Authority the right to take whatever action at law or in equity as may appear reasonably necessary to enforce performance or observance of any obligations, agreements, or covenants under this Agreement, including without limitation:

(i) termination of this Agreement, (ii) without liability, taking possession of the Property and of all materials, equipment, tools, construction equipment and machinery thereon owned by Contractor; (iii) acceptance of assignment of subcontracts; and, (iv) completion of the Work by whatever reasonable method Authority may deem expedient.

(b) Surety. In the event of termination by Authority, Authority shall immediately serve written notice on the surety and Contractor. The surety shall have the right to take over and perform the Work if, within ten (10) calendar days after receiving the notice, it so notifies Authority, in writing, and promptly commences work (and thereafter, the surety shall be bound by all the terms and conditions of this Agreement).

(c) Payment. In the event of termination, Contractor shall not be entitled to receive any further payment until the Work is completed, and applicable lien periods have expired. If the unpaid balance of the Contract Sum exceeds the expense of completing the Work, plus compensation for additional managerial and administrative services and all other reasonable costs and expenses incurred by, or on behalf of Authority, the excess shall be paid to Contractor. If such expenses incurred by Authority exceed the unpaid balance, then, notwithstanding any other remedy invoked by, or otherwise available to, Authority, Contractor and surety (on a joint and several basis) shall be liable for the difference to Authority, and shall promptly pay such amount upon written demand by Authority. Such obligation shall survive the expiration or termination of this Agreement. In the event of any conflict between the terms of this Section 4.3(c) and any other provision of this Agreement, the terms of this Section 4.3(c) shall control.

(d) Liquidated Damages for Delay. By executing this Agreement, Contractor represents that it can, and will, complete the Work within the Contract Time. If Contractor fails to reach Substantial Completion by the date required by this Agreement, the Parties agree that Authority would suffer damages related to the delay, but that such damages would be extremely difficult and impracticable to ascertain. The Parties therefore agree that a reasonable estimate of the damages to be suffered by Authority in the event of such a delay is [\_\_\_\_\_] and No/100ths Dollars [(\$\_\_\_\_\_) ] per calendar day. Contractor shall therefore pay to Authority that amount for each calendar day during which Substantial Completion is delayed beyond the date for Substantial Completion required by, and as set forth in, the Schedule. At Authority's discretion, Authority shall be entitled to deduct such amount from any payment otherwise due Contractor, and in no event shall such deduction constitute a breach of this Agreement by Authority. Any such amount not deducted shall be immediately payable by

Contractor to Authority on Authority's written demand. Such payments are: (i) liquidated damages to Authority solely for Contractor's failure to timely complete the Work in accordance with this Agreement; (ii) in addition to any other remedy available to Authority for Contractor's other breach or default(s) under this Agreement; and (iii) not a penalty. Such liquidated damages are not in lieu of Contractor's indemnity obligations set forth separately in this Agreement. This Section 4.3(d) replaces Section 33(a) of the General Conditions, in its entirety. For the avoidance of doubt, the Parties agree and acknowledge that Section 33(b) and Section 33(c) of the General Conditions remain in full force and effect, and are to be read in conjunction with this Section 4.3(d).

Section 4.4 Remedies Cumulative.

No right, power, or remedy given to Authority by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to Authority by the terms of any such instrument, or by any statute or otherwise against Contractor and any other person. Neither the failure nor any delay on the part of Authority to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by Authority of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 4.5 Termination for Convenience.

Authority shall have the right to terminate this Agreement for convenience pursuant to Section 34 of the General Conditions.

**ARTICLE 5**  
**PARTIES' DISPUTES**

Section 5.1 Definition of Claim Governed by Dispute Clause.

"Claim," as used in this clause, means a written demand or written assertion by one of the Parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of terms of this Agreement, or other relief arising under or relating to this Agreement. A claim arising under this Agreement, unlike a claim relating to this Agreement, is a claim that can be resolved under this Agreement that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by complying with the requirements of this Article 5, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

Section 5.2 Applicability of Dispute Clause.

Except for disputes arising under applicable labor standards (i.e., Davis-Bacon and related acts), all disputes arising under or relating to this Agreement, including any claims for

damages for the alleged breach thereof which are not disposed of by this Agreement, shall be resolved under this Article 5. This Article 5 supplements Section 31 of the General Conditions.

Section 5.3 Written Claims to be Submitted to Contracting Officer.

All claims by Contractor shall be made in writing and submitted to the Contracting Officer for a written decision.

Section 5.4 Notice of Decision or Decision Date.

The Contracting Officer shall, within fifteen (15) calendar days after receipt of the request, decide the claim or notify Contractor of the date by which the decision will be made. In no event shall the Contracting Officer render a decision later than sixty (60) calendar days from the receipt of the request.

Section 5.5 Effect of Contracting Officer's Decision.

The Contracting Officer's decision shall be final unless Contractor submits a demand for arbitration within the applicable statute of limitations, in accordance with Section 5.8 of this Agreement.

Section 5.6 Contractor's Duty to Perform Pending Claim Resolution.

Contractor shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to this Agreement, and comply with any decision of the Contracting Officer.

Section 5.7 Identification of Contracting Officer.

For purposes of this Agreement, Authority's Contracting Officer shall be Authority Executive Director or his or her designee (the "Contracting Officer").

Section 5.8 Arbitration of Disputes.

In the event Contractor disputes the Contracting Officer's determination, then the Parties shall submit the dispute to binding arbitration which, unless the Parties mutually agree otherwise, shall be in accordance with the Arbitration Rules and Procedures of JAMS (the "JAMS Rules") currently in effect, unless arbitration is not required pursuant to Section 5.9 of this Agreement, in which event Contractor shall proceed in accordance with Section 31 of the General Conditions. The demand for arbitration shall be filed in writing with Authority and with JAMS. The arbitration panel shall consist of a single arbitrator and the process for the arbitration shall proceed in accordance with the then current JAMS Rules. A demand for arbitration shall be made within thirty (30) calendar days following the Contracting Officer's determination, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitations.

Section 5.9 Situations when Arbitration Not Applicable.



The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by Parties shall be specifically enforceable under applicable law in any court having jurisdiction thereof. This Agreement to arbitrate shall not apply if: (a) any person or entity whom either Party believes is necessary or beneficial to the full resolution of the claim (including but not limited to Architect) cannot be joined in or bound by the arbitration proceeding; or (b) any person or entity whom either Party believes is necessary as a witness for such a proceeding is not available for such a proceeding; or (c) the amount in controversy exceeds Fifty Thousand and No/100ths Dollars (\$50,000.00); or (d) if any change in the Contract Time or change in the date set forth for Substantial Completion could result from the arbitration.

Section 5.10 Judgment on Final Award.

The arbitrator shall make an award in writing that is consistent with the terms of this Agreement (including but not limited to the terms governing payment of attorneys' fees) and the laws of the state of California, and that includes findings of fact and a reasoned decision. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

Section 5.11 Notice of Third-Party Claims.

In accordance with Section 9201(b) of the California Public Contract Code, Authority shall provide Contractor timely notification of any third-party claim related to this Agreement (if any).

**ARTICLE 6**  
**FEDERAL REQUIREMENTS**

Section 6.1 Certain Requirements.

(a) Compliance with Laws. Contractor shall comply with all applicable state and federal laws, rules and regulations, including but not limited to the requirements of the following, as the same may be amended from time to time:

(i) The requirements of Executive Order 11246, as more particularly set forth in Exhibit J;

(ii) The Fair Housing Act, 42 U.S.C. 3601 et seq., and regulations issued thereunder, 24 CFR Part 100; Executive Order 11063 (Equal Opportunity in Housing) and regulations issued thereunder, 24 CFR Part 107; the fair housing poster regulations, 24 CFR Part 110, and the HUD Fair Housing Act Advertising Guidelines;

(iii) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and regulations issued thereunder relating to nondiscrimination in housing, 24 CFR Part 1;

(iv) Age Discrimination Act of 1975, 42 U.S.C. 6101-07, and regulations issued thereunder, 24 CFR Part 146;

(v) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and regulations issued thereunder, 24 CFR Part 8; the Americans with Disabilities Act, 42 U.S.C. 12181-12189, and regulations issued thereunder, 28 CFR Part 36; and

(vi) The Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4801-4846.), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. 4851 et seq.), and implementing regulations at 24 C.F.R. Part 35.

(b) No Limitation. Contractor is required to comply with all applicable laws regarding the Work, and the failure to include, or otherwise specify, any applicable law in this Section 6.1, or elsewhere in this Agreement, shall not be construed to waive, limit, or otherwise impair Contractor's obligation to comply with such laws.

## Section 6.2 Recordkeeping, Audit & Reporting Requirements

(a) Recordkeeping; Access. Contractor's books and records pertaining to its performance under this Agreement shall be kept in accordance with generally accepted accounting principles, and shall be retained for at least three (3) years after Authority makes final payment to Contractor under this Agreement and all other pending matters are closed. Contractor agrees to grant a right of access to Authority, HUD, any agency providing funds to Authority, the Comptroller General of the United States, and any of their authorized representatives, with respect to any books, documents, papers, or other records pertinent to this Agreement in order to make audits, examinations, excerpts, and transcripts. Authority shall notify Contractor of any records it deems insufficient. Contractor shall have fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by Authority in such notice, or if a period longer than fifteen (15) calendar days is reasonably necessary to correct the deficiency, then Contractor shall begin to correct the deficiency within fifteen (15) calendar days and correct the deficiency as soon as reasonably possible.

(b) Contractors. Contractor agrees to include in first-tier subcontracts under this Agreement a clause substantially the same as Section 6.2(a) of this Agreement. The term "subcontract" as used in this clause excludes contracts and purchase orders not exceeding Ten Thousand and No/100ths Dollars (\$10,000.00).

(c) Access for Disputed Matters. The period of access and examination under Section 6(a) and Section 6(b) of this Agreement for records relating to: (i) appeals under the Dispute Section of this Agreement; (ii) litigation or settlements of disputes arising from the performance of this Agreement; or (iii) costs and expenses of this Agreement to which Authority, 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.

(d) Audit. Authority, HUD, any agency providing funds to Authority, the Comptroller General of the United States, or any of their duly authorized representatives, shall

have the right to perform any audit of Contractor's finances and records related to its performance under this Agreement, including without limitation, the financial arrangement with anyone Contractor may delegate to discharge any part of its obligations under this Agreement.

Section 6.3 Interest of Members of Congress.

No Member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom.

Section 6.4 Interest of Member, Officer, or Employee and Former Member, Officer, or Employee of Authority.

No member, officer, or employee of Authority, no member of the governing body of the locality in which the project is situated, no member of the governing body by which Authority 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 (1) year thereafter or such longer time as Authority's Code of Ethics may require, have any interest, direct or indirect, in this Agreement or the proceeds thereof, unless the conflict of interest is waived by Authority and by HUD.

Section 6.5 Lobbying Activities.

Contractor shall comply with 31 USC 1352 which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or 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; or the modification of any Federal contract, loan, or cooperative agreement. Contractor further agrees to comply with the requirement of such legislation to furnish a disclosure (OMB Standard Form LLL) if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with a Federal contract, grant, loan, or cooperative agreement, which payment would be prohibited if made from Federal appropriated funds.

**ARTICLE 7**  
**GENERAL PROVISIONS**

Section 7.1 Relationship of Parties.

Nothing contained in this Agreement shall be interpreted or understood by any of the Parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between Authority and Contractor or its agents, employees or subcontractors, and Contractor shall at all times be deemed an

independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. Contractor has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under this Agreement. In regards to the performance of the Work, Contractor shall be solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding, and all other laws and regulations governing such matters, and shall include requirements in each contract that subcontractors shall be solely responsible for similar matters relating to their employees. Contractor shall be solely responsible for its own acts and those of its agents and employees. Contractor is not authorized to act on behalf of Authority with respect to any matters except those specifically set forth in this Agreement. Authority shall not have any liability or duty to any person, firm, corporation, or governmental body for any act of omission or commission, liability, or obligation of Contractor, whether arising from actions under this Agreement or otherwise. Authority agrees to exercise all reasonable efforts to enable Contractor to perform the Work in the best way and most expeditious manner by furnishing and approving, in a timely manner, information required by Contractor and making payments to Contractor in accordance with the requirements of the Contract Documents.

#### Section 7.2 No Claims.

Nothing contained in this Agreement shall create or justify any claim against Authority by any person that Contractor may have employed or with whom Contractor may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the performance of the Work, and Contractor shall include similar requirements in any contracts entered into for the performance of the Work.

#### Section 7.3 Amendments.

No alteration or variation of the terms of this Agreement shall be valid unless made in writing by the Parties.

#### Section 7.4 Indemnification.

(a) Contractor's Obligation. To the fullest extent permitted by law, Contractor shall indemnify and hold harmless Authority, and its commissioners, Architect, their consultants, and agents and employees or any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a Party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a Party or person described in this Section 7.4.

(b) No Limitation. In claims against any person or entity indemnified under this Section 7.4 by an employee of Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 7.4 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

(c) Survival. The provisions of this Section 7.4 shall survive the termination or expiration of this Agreement.

Section 7.5 Non-Liability of Authority Officials, Employees and Agents.

No member, official, employee or agent of Authority shall be personally liable to Contractor in the event of any default or breach by Authority or for any amount which may become due to Contractor or its successor or on any obligation under the terms of this Agreement.

Section 7.6 No Third Party Beneficiaries.

There shall be no third party beneficiaries to this Agreement.

Section 7.7 Conflict of Interest.

Contractor covenants that neither it nor any of its directors, officers, partners or employees has any interest, nor shall acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the services hereunder. Contractor further covenants that in the performance of this Agreement, no person having such interest shall be employed by it.

Section 7.8 Representatives; Authorization.

(a) Representation. To facilitate communication, the Parties to this Agreement shall designate a representative with responsibility for the routine administration of each Party's obligations under this Agreement. The Parties initially appoint the following as representatives:

Authority: Joseph Nagel  
Housing Authority of the City of Alameda  
701 Atlantic Avenue  
Alameda, California 94501  
Tele: (510) 747-4300  
Email: jnagel@alamedahsg.org

Contractor: [ \_\_\_\_\_ ]

(b) Authorization. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent, request, or other action by Authority is

required or permitted under this Agreement, such action may be given, made, or taken by Authority's Executive Director and/or his designee, without further action or approval by Authority Board of Commissioners, and any such action shall be in writing. The Executive Director and/or his designee may, in his or her discretion, agree in writing to modification of the dates by which action are to be complete or to waive any terms and conditions of this Agreement. The Executive Director and/or his designee is authorized to execute all ancillary documents necessary to effectuate the intent of this Agreement, and to negotiate and execute amendments to this Agreement substantially in conformance with the intent of this Agreement.

Section 7.9 Notices, Demands and Communications.

Formal notices, demands, approvals, claims, and communications between the Parties shall be in writing and shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the Parties as follows:

Authority: Housing Authority of the City of Alameda  
701 Atlantic Avenue  
Alameda, California 94501  
Attention: Joseph Nagel, Construction Project Manager

Contractor: [ \_\_\_\_\_ ]

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section 7.9. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

Section 7.10 Applicable Law.

This Agreement shall be governed by California law.

Section 7.11 Parties Bound.

Other than in connection with the portions of the Work to be performed by Subcontractors, Contractor shall not assign or otherwise transfer this Agreement, as a whole, or in any part, without the prior written consent of Authority. Any such attempted assignment or transfer shall be null and void, and shall constitute a default under this Agreement. Except as otherwise limited herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their heirs, executors, administrators, legal representatives, successors, and assigns.

Section 7.12 Attorneys' Fees.

If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing Party will have the right to recover its reasonable attorneys' fees and costs of suit from the other Party.

Section 7.13 Severability.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 7.14 Waivers.

Any waiver by Authority of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by Authority to take action on any breach or default of Contractor or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Contractor to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by Authority to any act or omission by Contractor shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for Authority's written consent to future waivers.

Section 7.15 Title of Parts and Sections.

Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the provisions of this Agreement.

Section 7.16 Entire Understanding of the Parties.

This Agreement and the attached exhibits constitute the entire understanding and agreement of the Parties with respect to the matters set forth in this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it. The Parties have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (including but not limited to Section 1654 of the California Civil Code as may be amended from time to time, or any other state law, or common law principle) shall not apply to the interpretation of this Agreement.

Section 7.17 Builder's Risk Insurance.

Authority shall purchase and maintain a Builder's Risk Insurance policy, and shall include the interests of Authority, Contractor, and Subcontractors. All deductible amounts will be the responsibility of Authority. Notwithstanding any provision of this Agreement to the contrary, including but not limited to Section 33 of the General Conditions, pursuant to Section 7105 of the California Public Contract Code, Contractor shall not assume responsibility for repairing or restoring damages caused by an "act of God" in excess of five percent (5.00%) of

the Contract Sum; provided, that the Work damaged was performed by Contractor, or its Subcontractors (as applicable) in accordance with accepted and applicable building standards and this Agreement.

Section 7.18 Contractor Notifications.

(a) Notifications. Contractor shall notify Authority promptly, in writing, of any and all of the following:

(i) Any litigation or claim of any kind affecting or relating to Contractor or its subsidiaries or any Material Subcontractor where the amount claimed is or maybe One Hundred Thousand and No/100ths Dollars (\$100,000.00) or more whether covered by insurance or not;

(ii) Any termination of a construction contract to which Contractor is a party;

(iii) Any default or potential default of a Material Subcontractor or material supplier (including without limitation, its inability to maintain its schedule);

(iv) Any material adverse change in Contractor's or any Material Subcontractor's financial condition, any material adverse change in Contractor's or any Material Subcontractor's operations, or any change in the management of Contractor or any Material Subcontractors; or

(v) Any other circumstance, event, or occurrence that results in a material adverse change in Contractor's or any Material Subcontractor's ability to timely perform any of its obligations under any of the Contract Documents.

(b) Material Subcontractor. For the purposes of this Section 7.18(b), "Material Subcontractor" means a Subcontractor performing more than Twenty-Five Thousand and No/100ths Dollars (\$25,000.00) of the Work.

Section 7.19 Time.

Time is of the essence in the performance of the Work.

Section 7.20 Conflict Among Contract Documents.

In the event of any conflict between the terms of this Agreement and the other Contract Documents, the terms of this Agreement shall control. In the event of any conflict between the terms of this Agreement and the Exhibits, unless otherwise noted, the terms of this Agreement shall control.

Section 7.21 Multiple Originals; Counterpart.



This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the Parties have duly executed this Agreement by their duly authorized officers and shall become effective as of the Effective Date, it being the intent of the Parties that Authority be the last of the Parties to sign this Agreement.

**AUTHORITY:**

HOUSING AUTHORITY OF THE CITY OF  
ALAMEDA,  
a public body, corporate and politic

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**CONTRACTOR:**

[ \_\_\_\_\_ ]

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A**  
**SCOPE OF WORK**

[See Attached]

**EXHIBIT B**

**LIST OF SUBCONTRACTORS**

[See Attached]

**EXHIBIT C**

**CONTRACTOR SCHEDULE OF VALUES, QUALIFICATIONS AND ESCLUSIONS**

[See Attached]

**EXHIBIT D**  
**LIST OF PLANS**

[See Attached]

**EXHIBIT E**

**GENERAL CONDITIONS FOR CONSTRUCTION CONTRACT (FORM HUD-5370)**

[See Attached]

**EXHIBIT F**  
**INSURANCE REQUIREMENTS**

*General Requirements*

(i) During the performance of the work and until its acceptance by Authority, Contractor and each Subcontractor shall maintain in full force public liability and property damage insurance in accordance with this Exhibit F.

(ii) Before commencing work, Contractor and each of its Subcontractors shall furnish Authority with a Certificate of Insurance, in triplicate (naming the Housing Authority of the City of Alameda as the Certificate Holder) indicating insurance coverage with respect to the liability assumed under the provisions of this Exhibit F, and shall further indicate the insurance coverage is in force and will cover all operations under the contract with minimum limits as shown below:

*Contractor*

(1) Workers' Compensation Insurance that meets statutory limits and Employer's Liability limit at not less than One Million and No/100ths Dollars (\$1,000,000.00) per occurrence.

(2) Commercial General Liability including Blanket Contractual Liability, Employees as Additional Insured, Completed Operations-Products Liability, and deletion of any exclusion pertaining to explosion, collapse, and underground property damage hazards, Personal Injury Liability endorsement, Property Damage Liability including Broad Form Property Damage endorsement.

The minimum limits of liability shall be:

Contractor:

\$5,000,000 Combined Single Limit per Occurrence Bodily Injury and Property Damage

\$5,000,000 General Aggregate Limit

\$5,000,000 Products and Completed Operations Aggregate

Products and Completed Operations Insurance shall be maintained for a minimum period of two (2) years after final payment, and contractor shall continue to furnish evidence of such coverage to Authority on an annual basis during the aforementioned period.

Liability Insurance shall be written to cover all claims incurred during the term of this Agreement or out of any work performed pursuant to this Agreement, regardless of when such claim shall be first made against Authority and/or Contractor. Should any required liability



insurance be written on a claims-made basis, Contractor shall continue to provide such evidence of coverage for four (4) years after completion and acceptance of the Project.

(3) Comprehensive Automobile Liability Insurance applicable to any owned, non-owned or hired vehicles in limits not less than the following:

Five Million and No/100ths Dollars (\$5,000,000.00) per occurrence Combined Single Limit of Bodily Injury and Property Damage Liability.

The limits required in numbers 2 and 3 above may be satisfied through any combination of limits under primary liability and automobile liability policies and excess/umbrella liability policies.

Subcontractors

Contractor shall require that all Subcontractors maintain and provide evidence of insurance as follows:

Commercial General Liability:

Bodily Injury & Property Damage: \$1,000,000 per occurrence;

Personal Injury: \$1,000,000;

General Aggregate: \$1,000,000;

Products/Completed Operations Aggregate: \$1,000,000;

Automobile Bodily Injury and Property Damage Liability: \$1,000,000 per occurrence; and

Workers' Compensation Statutory Employers' Liability \$1,000,000.

With the exception of Workers' Compensation insurance, each policy shall be endorsed to include Authority and Contractor as additional insureds, and shall also provide the following:

All liability policies shall be endorsed to state that the Subcontractor's coverage shall be considered primary and non-contributory and that any liability insurance carried by Authority or Contractor shall be considered excess.

All policies of insurance required of the Subcontractor shall be endorsed to state that the insurer will provide Authority and Contractor with a thirty (30)-calendar day notice of cancellation or non-renewal. Prior to the time of commencement of the subcontract Subcontractors shall be required to deliver to Contractor certificates providing evidence of the insurance required under this provision, along with copies of the endorsements required above.

Hazardous Materials: Contractor shall require the hazardous materials removal subcontractor(s) to provide insurance for liability arising out of removal and disposal of all

hazardous materials from the Property. Such insurance shall be for the minimum limits of Five Million and No/100ths Dollars (\$5,000,000.00) per occurrence and Five Million and No/100ths Dollars (\$5,000,000.00) in the aggregate, and shall name the Housing Authority of the City of Alameda and Contractor as additional insureds. The limits required in this Paragraph B may be satisfied by any combination of primary and excess/umbrella policies.

Contractor shall take responsible steps to insure that each of the Subcontracts and subordinate subcontractors assist and cooperate in every manner possible in connection with the adjustment of all claims arising out of operations within the scope of work provided for under the Contract, and shall cooperate with the insurer in all litigated claims and demands or defense which the insurer is called upon to adjust or resist which arise out of said work.

Proof of the above insurance policies furnished at Contractor's expense, and applicable to all operations under the Contract, must be provided to Authority prior to commencement of work under a Contract. Coverage shall be placed with insurance companies with A.M. Best Co.'s rating of no less than A-VII. The policy must name Authority as an additional insured and the consultant must provide Authority with Certificates of Insurance for the preceding coverage's. The insurance policies must provide a thirty (30)-calendar day notice of cancellation and be primary to any other insurance carried by Authority.

**EXHIBIT G**

**DAVIS BACON WAGE RATES**

[See Attached]

**EXHIBIT H**

**AHA SECTION 3 POLICY**

[See Attached]

**EXHIBIT I**

**SECTION 3 CERTIFICATION**

SECTION 3 AFFIRMATIVE ACTION PLAN

In accordance with the Housing and Urban Development Act of 1968, as amended, and the regulations pursuant to that Act.

---

(Contractor)

Agrees to comply with Section 3 of that Act by assuring that to the greatest extent feasible

- Training and employment opportunities will be given to lower income residents of the project; and
- Contracts for work in connection with the project will be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of project.

\_\_\_\_\_ will initiate the following actions to insure utilization of lower income project residents as employees or trainees and to incorporate project area small business as subcontractors and supplies:

1. Contractor will establish and maintain a directory of service organizations, job referral agencies and manpower training programs operating within, or serving, project area residents.
2. Contractor will submit prior to the award of a contract, a signed assurance to comply with Section 3 regulations and requirements.
3. Contractor will provide, prior to the signing of a contract, a statement of new work force needs, including trainee positions.
4. Contractor will notify Community based organizations of available employment opportunities, and shall maintain records of response from such organizations.
5. Contractor will undertake personal recruitment efforts directed to such service organizations and to schools with lower income resident training programs.
6. Contractor will maintain a file of the names and addresses of each low income resident worker referred and what action was taken with respect to each referred worker (Attached).

7. Contractor will include the Section 3 clause in every subcontract for work in connection with HUD projects (Attached).

8. For each subcontract, the Prime Contractor will submit, prior to Contract award, the Section 3 Affirmative Action Plans of its subcontractors.

9. Contractor will not attempt to circumvent Section 3 Provisions.

10. Contractor will make a good faith effort to employ or fill training positions with lower income project area residents, will, as a minimum, provide evidence of the following:

(a) Attempts to recruit from the project area through location advertising media, community organizations, public and private agencies operating within or serving the project area, such as the State Employment Department, and the Private Industry Council.

(b) Maintain a list of all lower income area residents who have applied either on their own or referral from any source, and if such persons, if otherwise qualified, have been employed.

11. Contractor will make a good faith effort to incorporate project area businesses as Subcontractors and Suppliers.

12. Contractor will provide the Section 3 workforce and business utilization reports required under this contract.

\_\_\_\_\_ fully realizes failure or refusal to comply and give satisfactory assurances of future compliance with the requirements of this Affirmative Action Plan shall be proper basis for any or all of the following actions: Cancellation, termination or suspension in whole or in part of the contract; a determination of ineligibility or debarment from any further contracts under any federal program with respect to which the failure or refusal occurred until satisfactory assurances of future compliance have been received.

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**EXHIBIT J**

**NOTICE FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT  
OPPORTUNITY UNDER EXECUTIVE ORDER 11246, AND THE STANDARD  
FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT  
SPECIFICATIONS**

[See Attached]

**EXHIBIT K**

**SCHEDULE**

[See Attached]



**EXHIBIT L**

**DOCUMENTS INCORPORATED FOR REFERENCE FROM RFP**

[See Attached]

**CONSTRUCTION SERVICES AGREEMENT**  
**BETWEEN**  
**THE**  
**HOUSING AUTHORITY OF THE CITY OF ALAMEDA,**  
**A PUBLIC BODY, CORPORATE AND POLITIC**  
**AND**  
[\_\_\_\_\_]

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