



**HOUSTON**  
HOUSING AUTHORITY

**Transforming Lives & Communities**

2640 Fountain View Drive ■ Houston, Texas 77057 ■ 713.260.0500 P ■ 713.260.0547 TTY ■ [www.housingforhouston.com](http://www.housingforhouston.com)

## **GENERAL TERMS AND CONDITIONS FOR PURCHASE ORDERS**

The following General Terms and Conditions (the “Terms and Conditions”) shall apply to and govern all written authorizations for the purchase of goods or services (“Purchase Order(s)”) that are issued by the Houston Housing Authority (the “HHA”).

1. **Incorporation of the Terms and Conditions into Purchase Order.** The Terms and Conditions set forth herein are expressly incorporated into any Purchase Orders issued by the HHA to a person or entity from whom the HHA is requesting to purchase goods or services (the “Contractor”).

2. **The HHA’s point of contact regarding Purchase Orders.** All communications regarding a Purchase Order shall be directed to the HHA’s Procurement Department; the Procurement Department may be contacted via email at [purchasing@housinforhouston.com](mailto:purchasing@housinforhouston.com).

3. **Issuance of a Purchase Order by the HHA.** Purchase Orders shall be issued by the HHA’s Procurement Department. Any Purchase Order issued by the HHA’s Procurement Department shall be considered a duly executed original, including Purchase Orders transmitted to a Contractor electronically or by facsimile.

4. **Acceptance.** A Contractor accepts a Purchase Order when the Contractor: (a) provides the HHA with written acceptance of the Purchase Order, which written acceptance may be transmitted electronically or by facsimile; or (b) commences any work on fulfilling or processing the Purchase Order. Acceptance of a Purchase Order constitutes acceptance of the Terms and Conditions.

5. **Entire Agreement.** The terms stated on the Purchase Order (e.g., price, quantity, scope of work), and the Terms and Conditions, which Terms and Conditions are expressly incorporated into and made part of the Purchase Order, shall constitute the entire agreement between the Contractor and the HHA, and shall supersede any prior oral or written terms, proposals, inquiries, agreements, negotiations, or commitments.<sup>1</sup> Any additional or different terms proposed by the Contractor are hereby rejected, unless such terms were agreed to in writing by a duly authorized representative of the HHA. No amendments, modifications, or substitutions to the Purchase Order will be binding unless agreed to in writing by the HHA and signed by a duly authorized representative of the HHA.

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<sup>1</sup> Hereinafter, the Purchase Order may alternatively be referred to as the “Contract.”



6. **Packing.** For Purchase Orders for the purchase of goods, unless expressly stated on the Purchase Order, no charges will be allowed for special handling, packing, wrapping, bags, containers, reels, or the like.

7. **Delivery.** For Purchase Orders for the purchase of goods, the goods shall be delivered at the time and place specified on the Purchase Order (the “Delivery Instructions”). If no delivery date is specified on the Purchase Order, the Contractor shall deliver the goods in full within a reasonable time of its receipt of the Purchase Order. Time is of the essence in delivering the goods. If it is unable to deliver the goods in accordance with the Delivery Instructions, the Contractor shall provide the HHA with prior written notification of same and obtain permission from the HHA’s Procurement Manager for an alternative delivery time and location. If the Contractor fails to deliver the goods in accordance with the Delivery Instructions stated on the Purchase Order, or any alternative delivery instructions that are applicable, the HHA may terminate the Contract; in such cases, the Contractor agrees to indemnify the HHA against any losses, damages, or reasonable costs the HHA incurs that are attributable to the Contractor’s failure to deliver. The HHA’s acceptance of late delivery, with or without prior objection by the HHA, shall not waive the HHA’s right to claim damage for the late delivery nor constitute a waiver of the requirement that the Contractor comply with the Delivery Instructions, whether stated in the Purchase Order, or otherwise agreed to by the parties, with respect to the delivery of any remaining goods.

8. **Shipping instructions.** Unless otherwise specified in a writing signed by both the Contractor and a person duly authorized by the HHA, all goods to be delivered pursuant to a Purchase Order shall be shipped prepaid, FOB Destination. When a specific written authorization exists to ship goods FOB Shipping Point, the Contractor shall prepay all shipping charges necessary to deliver the goods using the cheapest common carrier and bill the HHA in a unique line item on an invoice for the shipping charges, less any Federal transportation tax. The HHA reserves the right to refuse any COD shipment.

9. **Variation in quantity.** For Purchase Orders for the purchase of goods, variation in the quantity of an item called for in a Purchase Order shall not be allowed unless such variation is consented to by the HHA in writing.

10. **Inspection and rejection.** The HHA reserves the right to inspect any goods purchased pursuant to the Purchase Order. At its sole option, the HHA may reject all or a portion of any goods that it determines are defective or nonconforming to the specifications or terms and conditions of the order. Any rejection of goods, whether the goods are held by the HHA or returned, shall be at the Contractor’s sole risk and expense. If required by the HHA, the Contractor shall promptly repair or replace any defective or nonconforming goods at the Contractor’s sole expense. If the Contractor fails to timely deliver repaired or replacement goods, as requested by the HHA, then the HHA may obtain them from a third-party with the Contractor being responsible for the cost thereof. Any inspection or other action taken by the HHA under this paragraph shall not affect the Contractor’s obligations under the Purchase Order.

11. **Risk of Loss.** For Purchase Orders for the purchase of goods, risk of loss shall not pass to the HHA until the goods called for in the Purchase Order have been received and accepted by the HHA. The Contractor assumes full responsibility for crating, marking, packing, and transporting the goods. The Contractor is liable for any loss or damage to the goods prior to receipt and acceptance by the HHA, even in the event that the HHA has agreed to pay freight, express, or other transportation charges.



12. **Price.** The price for the goods or services being provided by the Contractor to the HHA is listed on the Purchase Order and is a fixed price that will remain firm during the period of the Contractor's performance; no price increase over and above the price indicated on the Purchase Order is effective unless agreed to in writing by the HHA and signed by a duly authorized representative of the HHA. If a price is not stated in a Purchase Order, it is agreed that the price last quoted or paid, or the prevailing market rate, shall apply (whichever is lower) for the duration of the Contract.

13. **Invoicing and payment.** The Contractor shall invoice the HHA within 30 days of the provision of any goods or services called for in the Purchase Order. The Contractor shall submit invoices to the "bill to" address shown on the Purchase Order. All invoices must be itemized and shall reference the Purchase Order number and contain a description of the goods delivered (including, but not necessarily limited to, quantity and price) or services provided. Unless otherwise stated in the Contract, the HHA shall remit payment for all properly invoiced amounts within 30 days after receipt of a properly submitted invoice, excepting any amounts disputed by the HHA. In the event of a dispute regarding an invoice, the Contractor shall continue performing its remaining obligations under the Purchase Order. Without prejudice to any other right or remedy it may have, the HHA reserves the right to set off any amount owing to it by the Contractor against any amount payable by the HHA to the Contractor. Payment of an invoice by the HHA, in whole or in part, shall not be construed as evidence or an admission by the HHA that the goods or services in question met the requirements of the Purchase Order,

14. **Warranty.** The Contractor warrants that any goods supplied under the Purchase Order are: (a) new and free from any defects in workmanship, material, and design; (b) conform to the applicable specifications; (c) are fit for their intended purpose and operate as intended; (d) are free and clear of all liens, claims, security interests, or encumbrances of any kind; and (e) do not infringe or misappropriate any third-party's intellectual property rights. The aforementioned warranties shall survive any delivery, inspection, acceptance, or payment for the goods and are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitation for a claim by the HHA of a breach of a warranty provided herein shall not begin to run until the HHA gains actual knowledge of the noncompliance that gives rise to the claim.

15. **Good and workmanlike manner.** Any services performed by the Contractor under this Purchase Order shall be performed in a good and workmanlike manner.

16. **Infringements.** The Contractor agrees to indemnify, defend, and hold harmless the HHA from and against all claims for patent, trademark, copyright, or franchising infringements arising from the purchase, installation, or use of goods purchased by the HHA from the Contractor pursuant to the Purchase Order, and, the Contractor agrees to assume any and all expenses, costs, or damages arising from such claims.

17. **Liens and encumbrances.** The Contractor is prohibited from placing any liens or encumbrances on property owned by the HHA or its affiliates.

18. **Insurance.** The insurance requirements set forth below shall apply to all Purchase Orders, except where specifically waived in writing (whether in whole or in part) by HHA.



- a. Before commencing work, the Contractor shall furnish HHA with complete copies of the relevant certificates of insurance, complete copies of the relevant policies required herein, the required endorsements, and copies of all respective policy declarations, showing that the following insurance is in force and will insure all operations under this Agreement as follows:
  - i. Workers' Compensation insurance in accordance with the State of Texas rules and regulations for all employees providing services hereunder. This policy must be endorsed to contain a waiver of subrogation and a thirty (30) day notice of cancellation or non-renewal in favor of HHA.
  - ii. Commercial General Liability ("CGL") insurance with a single limit for bodily injury of \$1,000,000.00 per occurrence and property damage limit of no less than \$1,000,000.00 per occurrence. The insurance may have a combined aggregate of coverage amounting to no less than \$1,000,000.00 per occurrence herein. Such insurance shall protect the Contractor against claims of bodily injury or death, including specifically such claims resulting from any form of sexual misconduct and for property damage to others. Such insurance shall also include coverage for products/completed operations and contractual liability. The insurance shall cover the use of all equipment, hoists and vehicles used on the site(s) not covered by automobile liability under (c) below. HHA must be named as additional insured for both ongoing and completed operations, and this policy must be endorsed to be primary/noncontributory, contain a waiver of subrogation in favor of HHA, and contain a thirty (30) day notice of cancellation or non-renewal in favor of HHA. If the Contractor has a "claims made policy," then the policy must provide a "retroactive date" which must be on or before the execution date of the Agreement and the extended reporting period may not be less than five years following the completion date of the Agreement.
  - iii. Automobile Liability insurance covering owned, non-owned, hired and all vehicles used by the Contractor with a combined single limit of not less than \$1,000,000.00 applicable to bodily injury, sickness or death and loss of, or damage to, property in any one occurrence. HHA must be named as an additional insured under this policy and this policy must be endorsed to be primary/noncontributory, contain a waiver of subrogation in favor of HHA, and contain a thirty (30) day notice of cancellation or non-renewal in favor of HHA.
- b. During the term of this Agreement, the Contractor shall conduct criminal background checks on all employees and subcontractors. The Contractor agrees that no employee or subcontractor convicted of a crime, whether a felony or a misdemeanor, shall be authorized to perform any work under the terms of this Agreement.
- c. All insurance shall be carried with companies that are financially responsible and admitted to do business in the State of Texas. The Contractor shall not permit the insurance policies



required for this Agreement to lapse during any period for which this Agreement is in effect. The Contractor is responsible for satisfying any and all deductibles or self-insured retentions that may apply to any of the policies referenced herein. For all additional insured endorsements required herein, the additional insured language shall not be limited to the fault of the Contractor or those acting on its behalf, and the provisions in this Agreement requiring HHA to be provided additional insured coverage are incorporated into and made a part of the Contractor's respective policies by reference. The Contractor shall require each of its subcontractors, if any, to provide the coverages noted in this section, unless such coverages are waived or reduced in writing by HHA.

- d. Before commencing its performance of any services under this Agreement, the Contractor shall provide HHA with the applicable policies, declarations, endorsements, and a certificate of insurance for the required coverages listed above so that HHA may confirm: (a) that said coverages are valid and in effect; (b) that HHA is named as an additional insured under the Contractor's commercial general liability insurance policy, automobile liability insurance policy, and any applicable umbrella policy; (c) that none of the required policies may be cancelled or non-renewed until at least thirty (30) days prior written notice has been provided to HHA; (d) that the Contractor's commercial general liability policy and automobile policy are primary; and that (e) the Contractor's workers' compensation policy, commercial general liability policy, and automobile policy, contain waivers of subrogation in favor of HHA.

**19. INDEMNITY.**

**THE CONTRACTOR COVENANTS AND AGREES TO FULLY INDEMNIFY, HOLD HARMLESS, AND DEFEND THE HHA AND ITS OFFICERS, DIRECTORS, EMPLOYEES, COMMISSIONERS, REPRESENTATIVES, AND AFFILIATES (THE "INDEMNIFIED PERSON(S)") INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND SUITS OF ANY KIND AND NATURE, INCLUDED BUT NOT LIMITED TO PERSONAL OR BODILY INJURY, DEATH, AND PROPERTY DAMAGE MADE UPON THE INDEMNIFIED PERSONS, DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO THE CONTRACTOR'S PERFORMANCE UNDER THIS CONTRACT. THE CONTRACTOR'S INDEMNITY IN FAVOR OF THE INDEMNIFIED PERSONS SHALL ENCOMPASS ANY ACTS OR OMISSIONS OF THE CONTRACTOR AND ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT, OR SUBCONTRACTOR OF THE CONTRACTOR AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS, AND REPRESENTATIVES WHILE IN THE EXERCISE OF THE CONTRACTOR'S RIGHTS UNDER THIS CONTRACT OR THE PERFORMANCE OF THE CONTRACTOR'S DUTIES UNDER THIS CONTRACT. SUCH INDEMNITY SHALL BE WITHOUT REGARD TO THE NEGLIGENCE (WHETHER ACTIVE, PASSIVE, SOLE, CONCURRENT OR GROSS), STRICT LIABILITY OR OTHER FAULT OF HHA OR ANY OF THE HHA INDEMNITIES.**

**NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, ANY LEGAL LIMITATIONS AFFECTING THE SCOPE OF PERMISSIBLE INDEMNITY SET FORTH IN**



**THIS PARAGRAPH SHALL BE READ INTO THIS PARAGRAPH SUCH THAT THIS PARAGRAPH PROVIDES THE MAXIMUM INDEMNITY PURSUANT TO ITS TERMS WHILE STILL COMPLYING WITH LEGAL LIMITATIONS.**

20. **Safety Requirements.** All goods furnished under this Purchase Order shall meet all applicable Federal and State requirements regarding health and safety. Any and all shipments of hazardous and toxic materials shall be labeled by the Contractor in accordance with applicable law, and, for such shipments, the Contractor shall provide the HHA's Purchasing Manager with a Material Safety Data Sheet that includes the Purchase Order's number.

21. **Assignment(s).** The Contractor shall not assign, delegate, or sell its rights and obligations under the Contract without the HHA's prior written consent.

22. **No third party rights.** Nothing contained in this Contract shall create a contractual relationship with, or a cause of action in favor of, a third party against the HHA.

23. **Independent contractor.** The Contractor, and any of its employees, agents, subcontractors, or representatives, is an independent contractor of the HHA, and not an employee, partner, agent, or joint venture of the HHA. The Contractor acknowledges that it shall be solely responsible for any liabilities it incurs in its performance of this Contract; the Contractor is solely responsible for the payment of wages and overtime to its employees.

24. **Subcontracting.** The Contractor shall not subcontract any portion of this Purchase Order without the express written consent of a duly authorized representative of the HHA.

25. **Taxes.** Pursuant to § 151.309 and § 151.310 of the Texas Tax Code, the HHA is tax-exempt. Therefore, all prices for goods or services under the Purchase Order shall exclude taxes, unless otherwise required by law. Upon request, the HHA will provide the Contractor with a certificate of tax exemption.

26. **Certification of eligibility.** The Contractor certifies that to the best of its knowledge and belief, neither it, nor any principal, person,<sup>2</sup> or entity with a pecuniary interest in the Contractor, is ineligible to: (a) be awarded contracts by an agency of the United States Government, the Department of Housing and Urban Development ("HUD"), or the State in which the work under this Contract is to be performed; or (2) participate in HUD programs pursuant to 24 CFR Part 24. The Contractor will conduct all suspension and debarment checks necessary to ensure with this paragraph. The certification of eligibility provided by the Contractor pursuant to this paragraph is a material representation of fact that the HHA relied on when it awarded the Purchase Order to the Contractor. If it is later determined that the Contractor provided a false certification, the HHA may terminate this Purchase Order and the Contractor may be debarred or suspended from participating in federally funded contract programs. The HHA advises that the Contractor familiarize itself with 2 CFR Part 180 and that it conduct any required eligibility check prior to acceptance of a Purchase Order. Upon the HHA's request, the Contractor agrees to submit a signed verification of

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<sup>2</sup> For purposes of ¶ 25, the term "person" shall be synonymous with the term "principal" as defined in 2 CFR § 180.995.



compliance with this section, although, such signed verification shall not be necessary to obligate the Contractor to comply with this section.

27. **Individuals with disabilities.** The Contractor represents and warrants that, with respect to its services, activities, and employment practices, it will comply with § 503 and § 504 of the Rehabilitation Act of 1973, 29 U.S.C. §§ 793-94, as amended, and will comply with the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. The Affirmative Action Clause of § 503 of the Rehabilitation Act is incorporated by reference into these Terms and Conditions.

28. **Non-discrimination.** In accordance with Title VI of the Civil Rights Act of 1964 (“Title VI”), and relevant federal regulations promulgated pursuant to Title VI, the Contractor represents and warrants that in performing its obligations under the Purchase Order, or any activity supported by the Purchase Order, the Contractor shall not discriminate against any company, subcontractor, employee or other person or entity on the bases of race, color, sex, or national origin.

29. **Termination for Purchase Orders of less than \$10,000.** The HHA reserves the right to terminate this Purchase Order at any time in its own discretion. In the event of termination, the HHA will pay the Contractor pro rata for (a) any goods delivered to and accepted by the HHA prior to termination or (b) any services performed for and accepted by the HHA prior to termination.

30. **Termination for Purchase Orders of \$10,000 or more.** The HHA may terminate the Contract in whole, or from time to time in part, for the HHA’s convenience or for the failure of the Contractor to fulfill its obligations under the Contract. The HHA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, the Contractor shall: (a) immediately discontinue all work or services affected (unless the notice directs otherwise), and (b) deliver to the HHA all information, reports, papers, and other materials accumulated or generated in performing the Contract, whether completed or in process. If the termination is for the convenience of the HHA, the HHA shall be liable only for payment for services rendered before the effective date of the termination. If the termination is due to the failure of the Contractor to fulfill its obligations under the Contract (cause or default), the HHA may (a) require the Contractor to deliver to it, in the manner and to the extent directed by the HHA, any work described in the Notice of Termination; (b) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the HHA; and (c) withhold any payments to the Contractor, for the purpose of set-off or partial payment, as the case may be, of amounts owed by the HHA to the Contractor. In the event of termination for cause or default, the HHA shall be liable to the Contractor for reasonable costs incurred by the Contractor before the effective date of the termination. Any dispute shall be decided by the Contracting Officer, who, for the purpose of the Purchase Order, shall be the HHA’s Procurement Manager.

31. **Examination and retention of the Contractor’s records.** For federally-funded Purchase Orders of \$3,000 or more, the HHA, HUD, or the Comptroller General of the United States, or any of their duly authorized representatives, shall, until three years after final payment under this Contract, have access to and right to examine any of the Contractor’s directly pertinent books, documents, papers, or other records involving the transactions related to this Contract for the purpose of making audit, examination, excerpts, and transcriptions.



32. **Right in data and patent rights (ownership and proprietary interest).** For any federally-funded Purchase Order, the HHA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials, and documents discovered or produced by the Contractor pursuant to the terms of this Contract, including, but not limited to, reports, memoranda, or letters concerning the research and reporting tasks of the Contract.

33. **Energy efficiency.** For any federally-funded Purchase Order, the Contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy the Energy Policy and Conservation Act (Pub. L. 94-163) for the State in which the work under the Contract is performed.

34. **Procurement of recovered materials.**

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

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

35. **EEO Requirements.** For any Purchase Order that meets the definition of a “federally assisted construction contract,” as set forth in 41 CFR Part 60-1.3, the Contractor shall comply with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in regulations promulgated by the Department of Labor codified at 41 CFR Chapter 60 (the Contractor agrees that the equal opportunity clause contained therein is incorporated into this Purchase Order by reference).

36. **Clean Air Act.** For any federally funded Purchase Order in excess of \$150,000, the Contractor must comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

37. **Prevailing wages.** For any federally funded Purchase Order where the Contractor will perform work subject to prevailing wage requirements, the Contractor shall pay its workers at least once





weekly and in an amount not less than the prevailing wage rates. Additionally, the Contractor shall comply with the following regulations, as noted:

(a) The Copeland “Anti-Kickback” Act (18 U.S.C. 874, as supplemented in regulations promulgated by the Department of Labor codified at 29 CFR Part 3, shall apply to all Purchase Orders for construction or repair.

(b) The Davis-Bacon Act (40 U.S.C. § 276a to § 276a-7), as supplemented by regulations promulgated by the Department of Labor codified at 29 CFR Part 5, shall apply to all Purchase Orders for construction in excess of \$2,000 or whenever required by Federal grant program legislation.

(c) Section 103 and § 107 of the Contract Work Hours and Safety Standards (40 U.S.C. 327-330), as supplemented by regulations promulgated by the Department of Labor codified at 29 CFR Part 5, shall apply to all Purchase Orders for construction in excess of \$2,000.

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

(a) The work to be performed under this Purchase Order may be subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (“Section 3”). Section 3 does not apply to any purchase order solely for materials, goods, or supplies, although the HHA encourages Section 3’s application in such cases. Section 3, however, depending on funding sources, and funding thresholds for certain sources, may apply to purchase orders for materials, goods, or supplies where the purchase order includes work for, e.g., installation of materials acquired through the purchase order.

(b) The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(c) To the extent required by law, the parties to this Purchase Order will comply with HUD’s regulations in 24 CFR part 135, which implement Section 3. The parties to this Purchase Order certify that they are under no contractual or other impediment that would prevent them from complying with part 135 of the regulations.

(d) The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the Contractor’s commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.



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

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

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

(h) With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

39. **Choice of law and venue.** The Contract shall be governed by the laws of the State of Texas. Venue for any dispute arising under the Contract, or any dispute related to the Contract, shall lie exclusively in any court of competent jurisdiction within Harris County, Texas.

40. **Disputes.** Prior to the initiation of any legal action concerning a dispute arising from or relating to a Purchase Order, the HHA and the Contractor agree to mediate the dispute before a mutually agreeable mediator (neither party will unreasonably refuse to agree to a proposed mediator). Mediation shall be non-binding. **IN THE EVENT A LEGAL ACTION IS INITIATED, BOTH PARTIES WAIVE THEIR RIGHT TO A JURY TRIAL.**

41. **Legal construction.** If any provision in this Contract is for any reason unenforceable, then the remaining provisions of the Contract shall be enforced to the extent possible, and this Contract shall be enforced as if the unenforceable provision had never been included herein. Whenever context requires, the singular will include the plural (and vice-versa) and references to gender shall include the masculine and feminine. Article and section headings in this Contract are for reference only and are not intended to restrict or define the text of any section or article herein. This Contract shall not be construed more or less favorably by reason of the authorship or origin of its language; this Contract shall not be construed against the drafter in the event of an ambiguity (or otherwise).

