Contract Provisions Required by Federal Law
or Owner Contract with the
U.S. Department of Housing and Urban Development
Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number.

These contracts between a HUD grantee (housing agency (HA)) and an architect/engineer (A/E) for design and construction services do not require either party to submit any materials to HUD. The forms provide a contractual agreement for the services to be provided by the A/E and establishes responsibilities of both parties pursuant to the contract. The regulatory authority is 2 CFR 200. These contractual agreements are required by Federal law or regulation pursuant to 2 CFR Part 200. Signing of the contracts is required to obtain or retain benefits. The contracts do not lend themselves to confidentiality.

1.0 Contract Provisions Required by Federal Law or Owner Contract with the U.S. Department of Housing and Urban Development (HUD).

1.1 Contract Adjustments. Notwithstanding any other term or condition of this Agreement, any settlement or equitable adjustment due to termination, suspension or delays by the Owner shall be negotiated based on the cost principles stated at 48 CFR Subpart 31.2 and conform to the Contract pricing provisions of 2 CFR 200.

1.2 Additional Services. The Owner shall perform a cost or price analysis as required by 2 CFR 200 prior to the issuance of a contract modification/amendment for Additional Services. Such Additional Services shall be within the general scope of services covered by this Agreement. The Design Professional shall provide supporting cost information in sufficient detail to permit the Owner to perform the required cost or price analysis.

1.3 Restrictive Drawings and Specifications. In accordance with 2 CFR 200 and contract agreements between the Owner and HUD, the Design Professional shall not require the use of materials, products, or services that unduly restrict competition.

1.4 Design Certification. Where the Owner is required by federal regulations to provide HUD a Design Professional certification regarding the design of the Projects (24 CFR 905.312), the Design Professional shall provide such a certification to the Owner.

1.5 Retention and Inspection of Records. Pursuant to 2 CFR 85.26(i)(10) and (11), access shall be given by the Design Professional to the Owner, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the Design Professional which are directly pertinent to that specific Contract for the purpose of making an audit, examination, excerpts, and transcriptions. All required records shall be retained for three years after the Owner or Design Professional and other subgrantees make final payments and all other pending matters are closed.

1.6 Copyrights and Rights in Data. HUD has no regulations pertaining to copyrights or rights in data as provided in 24 CFR 85.36. HUD requirements, Article 45 of the General Conditions to the Contract for Construction (form HUD-5370) requires that contractors pay all royalties and license fees. All drawings and specifications prepared by the Design Professional pursuant to this contract will identify any applicable patents to enable the general contractor to fulfill the requirements of the construction contract.

1.7 Conflicts of Interest. Based in part on federal regulations (2 CFR 200) and Contract agreement between the Owner and HUD, no employee, officer, or agent of the Owner (HUD grantee) shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his or her immediate family,

(iii) His or her partner, or

(iv) An organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee’s or subgrantee’s officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from Contractors, or parties to sub-agreements.

Grantees and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee’s and subgrantee’s officers, employees, or agents or by Contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

Neither the Owner nor any of its contractors or their subcontractors shall enter into any Contract, subcontract, or agreement, in connection with any Project or any property included or planned to be included in any Project, in which any member, officer, or employee of the Owner, or any member of the governing body of the locality in which the Project is situated, or any member of the governing body of the locality in which the Project was activated, or in any other public official of such locality or localities who exercises any responsibilities or functions with respect to the Project during his/her tenure or for one year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee of the Owner, or any such governing body member or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of his/her tenure any such interest, and if such interest is immediately disclosed to the Owner and such disclosure is entered upon the minutes of the Owner, the Owner, with the prior approval of the Government, may waive the prohibition contained in this subsection: Provided, That any such present member, officer, or employee of the Owner shall not participate in any action by the Owner relating to such contract, subcontract, or arrangement.
No member, officer, or employee of the Owner, no member of the
governing body of the locality in which the project is situated, no
member of the governing body of the locality in which the Owner
was activated, and no other public official of such locality or
localities who exercises any functions or responsibilities with respect
to the project, during his/her tenure or for one year thereafter, shall
have any interest, direct or indirect, in this contract or the proceeds
thereof.

1.8 Disputes. In part because of HUD regulations (2 CFR
200), this Design Professional Agreement, unless it is a small
purchase contract, has administrative, contractual, or legal remedies
for instances where the Design Professional violates or breaches
Agreement terms, and provide for such sanctions and penalties as
may be appropriate.

1.9 Termination. In part because of HUD regulations (24 CFR
85.36(i)(2)), this Design Professional Agreement, unless it is for an
amount of $10,000 or less, has requirements regarding termi-
nation by the Owner when for cause or convenience. These include the
manner by which the termination will be effected and basis for
settlement.

1.10 Interest of Members of Congress. Because of Contract
agreement between the Owner and HUD, no member of or delegate
to the Congress of the United States of America or Resident
Commissioner shall be admitted to any share or part of this Contract
or to any benefit to arise from it.

1.11 Limitation of Payments to Influence Certain Federal Trans-
action. The Limitation on Use of Appropriated Funds to Influence
Certain Federal Contracting and Financial Transactions Act,
Section 1352 of Title 31 U.S.C., provides in part that no appropri-
ated funds may be expended by recipient of a federal contract,
grant, loan, or cooperative agreement to pay any person, includ-
ing the Design Professional, for influencing or attempting to
influence an officer or employee of Congress in connection with
any of the following covered Federal actions: the awarding of any
federal contract, the making of any Federal grant, the making of
any federal loan, the entering into of any cooperative agreement,
and the extension, continuation, renewal, amendment, or modifi-
cation of any federal contract, grant, loan, or cooperative agree-
ment.

1.12 Employment, Training, and Contracting Opportunities for Low-
Income Persons, Section 3 of the Housing and Urban Devel-
opment Act of 1968.

A. The work to be performed under this contract is subject to the
requirements of section 3 of the Housing and Urban Development
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, par-ticularly
persons who are recipients of HUD assistance for hous-ing.
B. The parties to this contract agree to comply with HUD’s
regulations in 24 CFR part 135, which implement section 3. As
evidenced by their execution of this contract, the parties to this
contract certify that they are under no contractual or other im-
pediment that would prevent them from complying with the part 135
regulations.
C. The contractor agrees to send to each labor organization or
representative of workers with which the contractor has a collec-
tive bargaining agreement or other understanding, if any, a notice
advising the labor organization or workers’ representative of the p
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 employ-
ment positions can see the notice. The notice shall describe the
section 3 preference, shall set forth minimum number and job titles
subject to hire, availability of apprenticeship and training
positions, the qualifications for each; and the name and location of
the person(s) taking applications for each of the positions; and
the anticipated date the work shall begin.

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

E. The contractor will certify that any vacant employment
positions, including training positions, that are filled (1) after the
contractor is selected but before the contract is executed, and (2)
with persons other than those to whom the regulations of 24 CFR
part 135 require employment opportunities to be directed, were
not filled to circumvent the contractor’s obligations under 24 CFR
part 135.
F. Noncompliance with HUD’s regulations in 24 CFR part 135 may
result in sanctions, termination of this contract for default, and
debarment or suspension from future HUD assisted contracts.

G. Reserved.

H. Reserved.

1.13 Reserved.

1.14 Clean Air and Water. (Applicable to contracts in excess of
$100,000). Because of 24 CFR 85.36(i)(12) and federal law, the
Design Professional shall comply with applicable standards,
orders, or requirements issued under section 306 of the Clean Air
Act (42 U.S.C. § 1857h-4 transferred to 42 USC § 7607, section
508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order
11738, and Environmental Protection Agency regulations (40 CFR
part 15), on all contracts, subcontracts, and subgrants of amounts
in excess of $100,000.
1.15 Energy Efficiency. Pursuant to Federal regulations (2 C.F.R 200) and Federal law, except when working on an Indian housing authority Project on an Indian reservation, the Design Professional shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163 codified at 42 U.S.C.A. § 6321 et seq.).

1.16 Prevailing Wages. In accordance with Section 12 of the U.S. Housing Act of 1937 (42 U.S.C. 1437j) the Design Professional shall pay not less than the wages prevailing in the locality, as determined by or adopted (subsequent to a determination under applicable State or local law) by the Secretary of HUD, to all architects, technical engineers, draftsmen, and technicians.

1.17 Non-applicability of Fair Housing Requirements in Indian Housing Authority Contracts. Pursuant to 24 CFR section 905.115(b) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, and the Fair Housing Act (42 c U.S.C. 3601-3620), which prohibits discrimination based on race, color, religion, sex, national origin, handicap, or familial status in the sale or rental of housing do not apply to Indian Housing Authorities established by exercise of a Tribe’s powers of self-government.

1.18 Prohibition Against Liens. The Design professional is Prohibited from placing a lien on the Owner’s property. This prohibition shall be placed in all design professional subcontracts.