



324 East River Road
Brainerd, MN 56401
PH (218) 828-3705
FAX (218) 828-8817
www.brainerdhra.org

Special Brainerd HRA Board Meeting
Wednesday June 16th, 2021
Remote Meeting via WebEx

Join from browser:
<https://brainerdhra.my.webex.com/brainerdhra.my/j.php?MTID=mdeb6bce219eb8bc180258c2385dd>
Join by phone: 415-655-0001
Meeting number (access code): 182 300 2701
Meeting password: CNwKQ3SSD83

"Our mission is to provide affordable housing and redevelopment opportunities to strengthen our neighborhoods and community."

AGENDA

1. CALL TO ORDER
2. ROLL CALL
3. NEW BUSINESS
 - a. Approval to Execute Contract for North Star Boiler/Water Heater & Mechanical Upgrades Project
4. ADJOURN

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To: Brainerd HRA Board Members
From: John Schommer, Housing Rehabilitation Coordinator
Date: June 10, 2021
Re: Approval to Execute North Star Boiler/Water Heater Replacement Contract

At the April 28th, 2021 meeting we informed you of the need to replace the water heater and boiler at North Star Apartments. We hired TKDA to design and procure the new system and bids were unsealed on Tuesday June 8th. We received two bids as outlined in the attached bid tabulation, TKDA evaluated the lowest bid and bidder and is recommending awarding the contract to them.

Section 17.0, Board Approval of Procurement Actions, of the Brainerd HRA Procurement Policy states,

“17.1 Authority. The Board appoints and delegates procurement authority to the Executive Director (ED) in the amount not to exceed the Simplified Acquisition Threshold as set by the lesser of state or federal law and is responsible for ensuring that any procurement policies and procedures adopted are appropriate for the Agency. All procurements that exceed the Simplified Acquisition Threshold as set by the lesser of state or federal law must have approval from the Board prior to award and/or contract execution.”

Because the proposed contract amount is greater than the Simplified Acquisition Threshold, we are requesting the Board's approval to enter into a contract with Northern Air Corporation dba NAC Mechanical & Electrical Services in the amount of \$839,315.00.

Action Requested: Authorize the Executive Director to execute a contract with Northern Air Corporation dba NAC Mechanical & Electrical Services in the amount of \$839,315.00.

BRAINERD HOUSING & REDEVELOPMENT AUTHORITY CONSTRUCTION AGREEMENT

This CONTRACT AGREEMENT (“Agreement”) is made on 15th day of June 2021 by and between the **Brainerd Housing & Redevelopment Authority** (“HRA”) located at 324 East River Road, Brainerd, Minnesota 56401, and Northern Air Corporation dba NAC Mechanical & Electrical Services ("Contractor") located at 1001 Labore Industrial Court, Suite B, Vadnais Heights, MN 55110-5168.

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

SECTION 1. APPLICABLE CONTRACT DOCUMENTS.

1.1 This Agreement for construction, together with the other Contract Documents used for the types of projects described in the section, represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral.

1.2 If the awarded bid or quoted price for the Work is \$150,000 or less and the project Work is not funded in whole or in part by the U.S. Department of Housing and Urban Development (“HUD”), the Contract Documents forming the entire Agreement between HRA and Contractor shall consist of this Agreement, the plans and specifications, if any, addenda to the plans and specifications issued prior to execution of this Agreement, if any, written amendments to the Agreement signed by both parties to form a change order, a constructive change directive, or a written order for a minor change in the work issued by the HRA or the architect (collectively the “Contract Documents”).

1.3 If the awarded bid or quoted price for the Work is \$150,000 or less and more than \$2,000 and the project is funded in whole or in part by HUD, then the Contract Documents shall consist of the documents described in Section 1.2 above and the General Contract Conditions for Small Construction/Development Contracts (Form HUD-5370-EZ), as the provisions therein may apply to the project.

1.4 If the awarded bid price for the Work is in excess of \$150,000 and the project is funded in whole or in part by HUD, then the Contract Documents shall consist of the documents described in Section 1.2 above and the General Conditions for Construction Contracts – Public Housing Programs (Form HUD-5370), as the provisions therein may apply to the project.

1.5 If the awarded bid price for the Work is in excess of \$150,000, or at the HRA’s discretion, for a project that is less than \$150,000 for the Work but where the HRA has retained an architect, and the project is not funded at least in part by HUD, the Contract Documents shall consist of the documents described in Section 1.2 above and AIA Document A201-2017, General Conditions as modified by the HRA.

1.6 The Contract Documents are to be read as a whole and meaning given to each provision where possible. If an ambiguity exists in the Contract Documents, the specific provision shall take precedence over the general provision and the more stringent Contractor performance standard shall take precedence over the less stringent provision, provided the standard is in compliance with applicable law. If two provisions within the Contract Documents are substantially identical or duplicative, then the clauses in combination shall apply where possible, but if use of both provisions is contradictory or absurd, the provision appearing in this Agreement shall be used unless there is an applicable HUD-5370-EZ or 5370 provision.

2.1 Contractor shall furnish all labor, material, skill and equipment necessary or required to perform all the work in the Contract Documents (“Work”) generally described as follows:

North Star Apartments – 2021 Boiler/Water Heater and Mechanical Upgrades Project as per plans and specifications by TKDA dated May 11, 2021 and addendum 1 dated May 25, 2021 and addendum 2 dated June 1, 2021.

2.2 Contractor shall provide labor and materials as shown in the Contract Documents. The price (“Price”) including all taxes and permit fees shall be: **\$839,315.00**.

2.3 Contractor shall promptly pay for all materials, labor and equipment used in, or in connection with the performance of this Agreement when such bills or claims become due and indemnify and hold harmless the Project and the HRA from all claims and mechanic’s liens, and upon HRA request, furnish satisfactory evidence to the HRA, when and if required that the Contractor has complied with the above requirements.

2.4 Contractor shall begin work on receipt of being notified, in writing by the HRA that Contractor may proceed with the Work (“Notice to Proceed”). Contractor further agrees that except for delays caused solely by the HRA or excusable delay, the Contractor will fully complete the Work by August 31, 2021. Contractor agrees that time is of the essence in completing the Work and each phase thereof.

2.5 Contractor agrees that it is difficult for the HRA to determine the amount of all damages that the HRA would incur as a result of delay by the Contractor in substantial completion of the Work. Contractor and the HRA therefore agree that **\$200.00** will accrue each calendar day as liquidated damages, and not a penalty, for each calendar day that Contractor fails to achieve substantial completion of the Project, until substantial completion is achieved. Substantial completion shall be achieved on the day the HRA reasonably determines that the HRA or its tenants may occupy the premises because the Work is sufficiently complete. Accrued liquidated damages shall be an offset against the Contractor’s payments for the Work including any agreed-upon change orders increasing the original Price. If accrued liquidated damages exceed the Price, the HRA may seek to recover said excess amount over and above the offset portion through all remedies available to it.

2.6 Contractor agrees to proceed with the Work in an orderly and reasonable sequence and to abide by the HRA's decision as to all Contractor storage and working spaces of the Project.

2.7 To the fullest extent permitted by law, Contractor agrees to indemnify, defend and hold harmless the HRA, and HRA's agents and representatives, Architects, the HRA's lender and all other contractors and/or subcontractors from any and all losses or damage (including without limiting the generality of the foregoing, attorneys' fees and disbursements paid or incurred by the HRA to enforce the provisions of this paragraph) occasioned by the failure of Contractor to carry out the provisions of this Agreement arising out of bodily injury, sickness, disease or death, or to injury to or destruction of tangible property to the extent caused by the negligent acts or omissions of the 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 a claim, damage, loss or expense is caused in part by a party indemnified hereby. Further, in claims against any person or entity indemnified under this section by an employee of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

2.8 Contractor agrees to provide a performance and payment bond satisfactory to the HRA prior to the beginning of Work if the Price is \$25,000 or greater.

2.9 Subject to additional terms set forth in the Contract Documents, Contractor agrees to obtain worker's compensation insurance as is required by law, comprehensive general liability and property damage insurance to protect the Contractor and the HRA against claims for bodily injury or death or for damage to property occurring upon, in or about the Project, for the applicable claims period for this Project, and to have the HRA named as an additional insured with limits in amounts at least equal to those specified below:

Risk Insurance	\$1,000,000.00 Aggregate
Bodily Injury Liability	\$1,000,000.00 Each Person
General Liabilities, Including Automobiles	\$5,000,000.00 Aggregate
Property Damage Liability	\$1,000,000.00 Aggregate
Worker's Compensation	As required by law

2.9.1 Any and all insurance shall be issued by an "A" rated insurance company or companies. Contractor agrees to furnish the HRA with satisfactory evidence that he has complied with this paragraph. Contractor further agrees to obtain and furnish the HRA with an undertaking by the insurance company issuing each such policy that such policy will not be canceled except after thirty (30) days written notice to the HRA of its intention to do so.

2.9.2 Contractor agrees to assume the entire responsibility and liability for all damages or injury to any and all individuals, whether employees or otherwise and to all property, including the HRA's property arising out of, resulting from, or in a manner connected with the performance of the Work or occurring or resulting from the use by Contractor, its agents or employees of materials, equipment, instrumentality's or other

property, whether the same is owned by the HRA, Contractor or third parties, and Contractor agrees to indemnify, defend and save harmless the HRA, his agents and employees from any and all such claims, including, without limiting the generality of the foregoing claims for which the HRA may be, or may be claimed to be liable and attorneys' fees and disbursements paid or incurred to enforce the provisions of this paragraph.

2.10 Contractor agrees to accept responsibility for all damage caused by Contractor to clean and repair all surfaces soiled or damaged by Contractor or its subcontractors or suppliers, and to protect the Work. If any dispute arises between Contractor and its subcontractors as to which is responsible for any time of damage, Contractor shall be responsible to timely repair or pay for the damage or repair and resolve allocated responsibilities for the damage among those responsible.

2.11 Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract Documents unless they give other special instructions concerning these matters. In such case the Contractor shall evaluate the jobsite safety and shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that the Contract Documents direct means, methods, techniques, sequences or procedures that are not safe, Contractor shall give timely written notice to the HRA and shall not proceed with that portion of the Work without further written instructions from HRA.

2.12 Contractor is solely responsible for initiating, maintaining and supervising all safety precautions and measures in connection with the performance of this Agreement and agrees to take all safety precautions with respect to his work and shall comply with all applicable laws, ordinances, rules and regulations and lawful orders of any public or governmental authority for the safety of persons or property.

2.13 Contractor agrees not to assign any or all of this Agreement and not to assign any money due or to become due thereunder without first obtaining prior written consent of the HRA. Contractor shall supply the HRA with a list of all individuals or businesses to which it intends to subcontract the Work or from which it will obtain materials or equipment. Such list is attached hereto as Exhibit B and incorporated herein by reference.

2.14 Contractor agrees to provide detail of sales taxes paid on Exhibit C for materials furnished on project from contractor and any subcontractors upon completion of project.

2.15 Contractor agrees to furnish such shop drawings or samples as may be required by the HRA.

2.16 Contractor agrees not to employ any person who is reasonably unacceptable to the HRA. Contractor further agrees to remove any such person from the Project if the HRA reasonably requests.

2.17 Contractor agrees that the HRA, or his authorized representatives, shall have the right to order, in writing, the elimination or addition of any part or parts of work or materials as omitted from or added to the Contract Documents by Architect and/or the HRA. Fair adjustments shall be made to the Price for such omitted or added Work or materials. No extra work shall be allowed or changes made by Contractor, or paid for by the HRA, unless and until authorized by the HRA, in writing, before the work and/or changes are begun. Contractor agrees to sign attached Exhibit A to this Agreement and waives all claims for additions or changes unless the HRA has signed a written change order.

2.18 Contractor further agrees to give prompt written notice to the HRA Contracting Officer of all claims for extras, for requests of extensions of time and for damages for delays or otherwise, and in accordance with General Conditions, if made part of the Contract Documents. Contractor agrees that any change orders for an increase in the Price and an extension to the time of performance must be consented to in writing by the HRA prior to commencing Work on the proposed change order. Further, Contractor agrees that only **Eric Charpentier, Executive Director** is authorized to sign change orders on the HRA's behalf.

2.19 Execution of the Agreement by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and has correlated personal observations with requirements of the Contract Documents.

2.20 Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the HRA. Contractor shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the HRA and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the HRA and Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

2.21 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the HRA or Architect issues in response to the Contractor's notices or requests for information pursuant to sections 2.18 and 2.19, the Contractor shall make Claims as provided in Section 2.17, or as required in the General Conditions if applicable. If the Contractor fails to perform the obligations of section 2.19, the Contractor shall pay such costs and damages to the HRA as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the HRA or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

2.22 Contractor agrees to correct any and all defects in the material or Work brought to its attention by HRA for a period of two years from the substantial completion date or the date the Certificate of Occupancy is issued by the building authority for the Project, whichever is later. Contractor hereby assigns and agrees to deliver to HRA all vendor warranties given by each equipment or parts manufacturer.

2.23 Contractor warrants to the HRA that: (1) materials and equipment furnished under the Agreement will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required; and (3) the Work will conform to the requirements of the Contract Documents.

2.24 In the event Contractor fails to correct, replace and/or repair faulty or defective work performed and/or materials furnished under the Contract Documents, or shall fail to complete or diligently proceed with the Work within the time herein provided for, the HRA, upon ten (10) days' notice in writing to Contractor shall have the right to correct, replace and/or re-execute such faulty or defective work, or to take over the Work and complete the same either through its own employees or through a contractor or subcontractor of its choice, and to charge the costs thereof to Contractor including compensation for the Architect's services, and other costs to HRA, against the sums owed under this Agreement and to pursue any and all other remedies provided by law, which are not waived by exercising rights in this section.

2.25 Contractor agrees that in case of default on the part of Contractor, the material and equipment of Contractor shall be left at the Project for use by the HRA in completing the Work. The HRA shall be obligated to pay the Contractor for all such material and equipment, which may be an offset against costs otherwise owed to HRA by Contractor due to its default.

2.26 Contractor agrees to obtain, at its cost, all permits, all licenses, all plan approval, all inspections and all other governmental approvals relating to this work on the Project and to comply with all federal, state, county, and municipal laws, codes and regulations and to pay all costs and expenses incurred in connection with such compliance, to pay all fees and taxes, including sales and use taxes, and also pay all taxes imposed by any state or federal law for any employment insurance, pensions, retirement funds or any similar purpose, and to furnish all necessary reports and information to the appropriate federal, state and municipal agencies, with respect to all of the foregoing, the same as though Contractor was in fact the HRA and to hold the HRA and any other contractor and/or subcontractor harmless from any and all losses or damage occasioned by the failure of Contractor to comply with the terms of this paragraph.

2.27 Contractor agrees to pay all royalties, license and permit fees to defend all suits or claims for infringement of any patent rights involved in the work of Contractor under this Agreement and to save the HRA and other contractors harmless from loss, costs or expense on account of such use or infringement by Contractor.

2.28 If any part of Contractor's Work depends, for proper execution, upon the work of the HRA, or any other contractor, Contractor shall inspect and promptly report to the HRA any apparent discrepancies or defects in such work that renders it unsuitable for use on the Project.

Failure of the Contractor to inspect and report shall constitute an acceptance of the work of the HRA and other contractors.

2.29 If HRA has agreed to partial payments during the Work, Contractor shall provide complete invoices, receipts and contingent lien waivers in the form required by the HRA. The HRA shall make progress payments approximately every 30 days as the work proceeds. Request for payment will be deemed accepted by the HRA on the date the HRA determines, in its sole judgment, that the HRA has all the information required to process the payment. Acceptance by the HRA shall cause the request for payment to fall to the following payment cycle, consistent with the PPA.

2.30 In accordance with the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 (“PPA”) governing payments in this Agreement, Contractor shall pay subcontractors within ten (10) days of receipt of payment from the **HRA** or pay interest to the subcontractor(s) on the obligation at a rate of 1.5% per month or any part of a month.

2.31 Contractor agrees to perform all Work in accordance with and to otherwise abide in all respects with all applicable federal, state and local laws, rules and ordinances. Contractor is responsible for removing all its debris from the site at its sole expense and pay for any costs associated with fees for dumpster or landfill costs. The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor’s tools, construction equipment, machinery and surplus materials from and about the Project.

2.32 Except to the extent provided in Minnesota Statutes, Section 337.10, subd. 3, the Contractor has no right to stop Work as a consequence of non-payment. In the event of any disagreement between the Contractor and HRA involving the Contractor’s entitlement to payment, the Contractor’s only remedy is to file a Claim in accordance with Article 15 (AIA A201 as applicable). The Contractor must diligently proceed with the Work pending resolution of the Claim.

2.33 If HUD is funding all or some portion of this Project, Contractor shall include in all its subcontractor agreements, the following “Section 3” clause:

- The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low-income persons, particularly persons who are recipients of HUD assistance for housing.
- The parties to this Agreement agree to comply with HUD’s regulations in 24 CFR part 75. As evidenced by their execution of this Agreement, the parties to this

contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.

- 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.
- The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 75, 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 75. 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 75.
- The Contractor will certify that any vacant employment positions, including training positions, that are filled: (1) after the Contractor is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 75 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 75.
- Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.

2.34 Contractor agrees to maintain for the duration of the Agreement, all requirements to comply with Minnesota Statutes, Section 16C.285 (Responsible Contractor).

SECTION 3. HRA TERMS AND CONDITIONS.

3.1 The HRA contracts with Contractor to do the Work described in Paragraph 1 hereof under the terms and conditions of the Contract Documents.

3.2 Pursuant to the PPA, the HRA agrees to pay Contractor the full amount due and properly owing, less retainage and other hold backs or offsets, upon satisfactory performance of the Work under this Agreement and upon the HRA's written acceptance of the Work.

3.3 Final payment, including all retainage and other hold backs or offsets, shall become due and payable within thirty (30) days after acceptance of the Project Work in writing by the

HRA. The HRA shall condition final payment upon receipt of IC 134 requirements, mechanic's lien waivers, submittals including but not limited to operation manuals and as-built drawings and upon Contractor providing to HRA any and all documents reasonably required by the HRA to assure Contractor's compliance with all federal, state and local laws.

3.4 For all Projects for which the initial Price is estimated to be \$100,000 or more, HRA shall comply with Minnesota Statutes, Section 574.26 requiring payment and performance bonds and Section 471.345 requiring competitive bidding or best value proposals as set forth therein.

3.5 The HRA may terminate the Contract if the Contractor:

3.5.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

3.5.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

3.5.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

3.5.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

3.6 When the HRA terminates the Contract for one of the reasons stated in Sections 3.5.1-3.5.4 above, the Contractor shall not be entitled to receive further payment until the Work is finished.

3.7 The HRA may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the HRA may determine.

3.8 The HRA may, at any time, terminate the Contract for the HRA's convenience and without cause.

3.9 Upon receipt of written notice from the HRA of such termination for the HRA's convenience the Contractor shall:

3.9.1 cease operations as directed by the HRA in the notice;

3.9.2 take actions necessary, or that the HRA may direct, for the protection and preservation of the Work; and

3.9.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

3.10 In case of termination for the HRA's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination.

SECTION 4. MISCELLANEOUS PROVISIONS.

BRAINERD HOUSING AND
REDEVELOPMENT AUTHORITY

Date: _____

By _____
Its: Executive Director

CONTRACTOR:

Date: _____

By _____
Its: Owner

ARE YOU A CORPORATION? _____
PLEASE PROVIDE ONE OF THE FOLLOWING:

FEDERAL ID # _____
OR SOCIAL SECURITY # _____

EXHIBIT A

TO: All Contractors and Suppliers

RE: Extras, Change Orders and Waiver

Any and all additional work which deviates from the original contract price shall be at your own risk unless authorized in writing by the HRA prior to said work occurring.

Any and all changes must be documented by a written change order signed by the HRA/Representative. Other employees of the HRA do not have express, implied or apparent authority to authorize additional work for the HRA. Verbal agreements or orders shall not constitute authorization and any work done pursuant to a verbal agreement or order shall be at your peril. This notice also constitutes your written waiver of any benefits conferred under a claim based on a quasi contract if and when work occurs pursuant to a verbal agreement or order.

Please sign and return this to:

THE BRAINERD HOUSING AND
REDEVELOPMENT AUTHORITY

CONTRACTOR

By _____
Its: Executive Director
324 East River Road
(218) 824-3425
(218) 828-8817 Fax

By _____
Its: Owner

Date: _____

Date: _____

VERIFICATION OF SUB-SUBCONTRACTORS AND SUPPLIERS

I, the undersigned, hereby certify and swear that the following list of subcontractors and or suppliers, is complete, including any and all suppliers of labor and material to and for the Project.

Firm _____

By _____ (Print Name)

Its _____ (Print Title)

EXHIBIT C

Public Housing Refund Contractor's Statement

Qualifying Entity: Brainerd HRA

Project Name: _____

Invoice Number(s): _____

Based on upon a review of our records for the project in question, it has been determined that the following amounts were paid in sales and/or use taxes:

Purchase Period(s)	Taxable Cost	MN Tax Paid (6.875%)	Local Tax Paid
_____	\$ _____	\$ _____	\$ _____ Brainerd .50%
			\$ _____ Baxter .50%

Company Name: _____

Address: _____

Phone: _____

I (We) declare under the penalties of criminal liability for willfully making a false claim that this statement has been examined, and, to the best of my (our) knowledge and belief, is true and complete.

Name: _____ Title: _____

Signature: _____ Date: _____

General Conditions for Construction Contracts - Public Housing Programs

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
OMB Approval No. 2577-0157 (exp. 11/30/2023)

Applicability. This form is applicable to any construction/development contract greater than \$150,000.

Public reporting burden for this collection of information is estimated to average 1 hour. This includes the time for collecting, reviewing, and reporting the data. The information requested is required to obtain a benefit. This form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 2 CFR 200, and those requirements set forth in Section 3 of the Housing and Urban Development Act of 1968 and its amendment by the Housing and Community Development Act of 1992, implemented by HUD at 24 CFR Part 135. The form is required for construction contracts awarded by Public Housing Agencies (PHAs). The form is used by Housing Authorities in solicitations to provide necessary contract clauses. If the form were not used, PHAs would be unable to enforce their contracts.. There are no assurances of confidentiality. 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.

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1. Definitions

- (a) "Architect" means the person or other entity engaged by the PHA to perform architectural, engineering, design, and other services related to the work as provided for in the contract. When a PHA uses an engineer to act in this capacity, the terms "architect" and "engineer" shall be synonymous. The Architect shall serve as a technical representative of the Contracting Officer. The Architect's authority is as set forth elsewhere in this contract.
- (b) "Contract" means the contract entered into between the PHA and the Contractor. It includes the forms of Bid, the Bid Bond, the Performance and Payment Bond or Bonds or other assurance of completion, the Certifications, Representations, and Other Statements of Bidders (form HUD-5370), these General Conditions of the Contract for Construction (form HUD-5370), the applicable wage rate determinations from the U.S. Department of Labor, any special conditions included elsewhere in the contract, the specifications, and drawings. It includes all formal changes to any of those documents by addendum, change order, or other modification.
- (c) "Contracting Officer" means the person delegated the authority by the PHA to enter into, administer, and/or terminate this contract and designated as such in writing to the Contractor. The term includes any successor Contracting Officer and any duly authorized representative of the Contracting Officer also designated in writing. The Contracting Officer shall be deemed the authorized agent of the PHA in all dealings with the Contractor.
- (d) "Contractor" means the person or other entity entering into the contract with the PHA to perform all of the work required under the contract.
- (e) "Drawings" means the drawings enumerated in the schedule of drawings contained in the Specifications and as described in the contract clause entitled Specifications and Drawings for Construction herein.
- (f) "HUD" means the United States of America acting through the Department of Housing and Urban Development including the Secretary, or any other person designated to act on its behalf. HUD has agreed, subject to the provisions of an Annual Contributions Terms and Conditions (ACC), to provide financial assistance to the PHA, which includes assistance in financing the work to be performed under this contract. As defined elsewhere in these General Conditions or the contract documents, the determination of HUD may be required to authorize changes in the work or for release of funds to the PHA for payment to the Contractor. Notwithstanding HUD's role, nothing in this contract shall be construed to create any contractual relationship between the Contractor and HUD.
- (g) "Project" means the entire project, whether construction or rehabilitation, the work for which is provided for in whole or in part under this contract.
- (h) "PHA" means the Public Housing Agency organized under applicable state laws which is a party to this contract.
- (i) "Specifications" means the written description of the technical requirements for construction and includes the criteria and tests for determining whether the requirements are met.
- (l) "Work" means materials, workmanship, and manufacture and fabrication of components.
- (a) The Contractor shall furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the work. The Contractor shall also furnish all necessary water, heat, light, and power not made available to the Contractor by the PHA pursuant to the clause entitled Availability and Use of Utility Services herein.
- (b) The Contractor shall perform on the site, and with its own organization, work equivalent to at least [] (12 percent unless otherwise indicated) of the total amount of work to be performed under the order. This percentage may be reduced by a supplemental agreement to this order if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the PHA.
- (c) At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.
- (d) The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall hold and save the PHA, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.
- (e) The Contractor shall lay out the work from base lines and bench marks indicated on the drawings and be responsible for all lines, levels, and measurements of all work executed under the contract. The Contractor shall verify the figures before laying out the work and will be held responsible for any error resulting from its failure to do so.
- (f) The Contractor shall confine all operations (including storage of materials) on PHA premises to areas authorized or approved by the Contracting Officer.
- (g) The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. After completing the work and before final inspection, the Contractor shall (1) remove from the premises all scaffolding, equipment, tools, and materials (including rejected materials) that are not the property of the PHA and all rubbish caused by its work; (2) leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer; (3) perform all specified tests; and, (4) deliver the installation in complete and operating condition.
- (h) The Contractor's responsibility will terminate when all work has been completed, the final inspection made, and the work accepted by the Contracting Officer. The Contractor will then be released from further obligation except as required by the warranties specified elsewhere in the contract.

3. Architect's Duties, Responsibilities, and Authority

- (a) The Architect for this contract, and any successor, shall be designated in writing by the Contracting Officer.

2. Contractor's Responsibility for Work



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required in the planning and production of the work. Such requests may be submitted as the need arises, but each such request shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay.

- (h) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the PHA and one set will be returned to the Contractor. As required by the Contracting Officer, the Contractor, upon completing the work under this contract, shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the work is completed and accepted.
- (i) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all shop drawings prepared by subcontractors are submitted to the Contracting Officer.

10. As-Built Drawings

- (a) "As-built drawings," as used in this clause, means drawings submitted by the Contractor or subcontractor at any tier to show the construction of a particular structure or work as actually completed under the contract. "As-built drawings" shall be synonymous with "Record drawings."
- (b) As required by the Contracting Officer, the Contractor shall provide the Contracting Officer accurate information to be used in the preparation of permanent as-built drawings. For this purpose, the Contractor shall record on one set of contract drawings all changes from the installations originally indicated, and record final locations of underground lines by depth from finish grade and by accurate horizontal offset distances to permanent surface improvements such as buildings, curbs, or edges of walks.
- (c) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all as-built drawings prepared by subcontractors are submitted to the Contracting Officer.

11. Material and Workmanship

- (a) All equipment, material, and articles furnished under this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the contract to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of, and as approved by the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.
- (b) Approval of equipment and materials.
 - (1) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the

machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

- (2) When required by the specifications or the Contracting Officer, the Contractor shall submit appropriately marked samples (and certificates related to them) for approval at the Contractor's expense, with all shipping charges prepaid. The Contractor shall label, or otherwise properly mark on the container, the material or product represented, its place of origin, the name of the producer, the Contractor's name, and the identification of the construction project for which the material or product is intended to be used.
- (3) Certificates shall be submitted in triplicate, describing each sample submitted for approval and certifying that the material, equipment or accessory complies with contract requirements. The certificates shall include the name and brand of the product, name of manufacturer, and the location where produced.
- (4) Approval of a sample shall not constitute a waiver of the PHA right to demand full compliance with contract requirements. Materials, equipment and accessories may be rejected for cause even though samples have been approved.
- (5) Wherever materials are required to comply with recognized standards or specifications, such specifications shall be accepted as establishing the technical qualities and testing methods, but shall not govern the number of tests required to be made nor modify other contract requirements. The Contracting Officer may require laboratory test reports on items submitted for approval or may approve materials on the basis of data submitted in certificates with samples. Check tests will be made on materials delivered for use only as frequently as the Contracting Officer determines necessary to insure compliance of materials with the specifications. The Contractor will assume all costs of retesting materials which fail to meet contract requirements and/or testing materials offered in substitution for those found deficient.
- (6) After approval, samples will be kept in the Project office until completion of work. They may be built into the work after a substantial quantity of the materials they represent has been built in and accepted.
- (c) Requirements concerning lead-based paint. The Contractor shall comply with the requirements concerning lead-based paint contained in the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) as implemented by 24 CFR Part 35.

12. Permits and Codes

- (a) The Contractor shall give all notices and comply with all applicable laws, ordinances, codes, rules and regulations. Notwithstanding the requirement of the Contractor to comply with the drawings and specifications in the contract, all work installed shall comply with all applicable codes and regulations as amended by any

waivers. Before installing the work, the Contractor shall examine the drawings and the specifications for compliance with applicable codes and regulations bearing on the work and shall immediately report any discrepancy it may discover to the Contracting Officer. Where the requirements of the drawings and specifications fail to comply with the applicable code or regulation, the Contracting Officer shall modify the contract by change order pursuant to the clause entitled Changes herein to conform to the code or regulation.

- (b) The Contractor shall secure and pay for all permits, fees, and licenses necessary for the proper execution and completion of the work. Where the PHA can arrange for the issuance of all or part of these permits, fees and licenses, without cost to the Contractor, the contract amount shall be reduced accordingly.

13. Health, Safety, and Accident Prevention

- (a) In performing this contract, the Contractor shall:
- (1) Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation;
 - (2) Protect the lives, health, and safety of other persons;
 - (3) Prevent damage to property, materials, supplies, and equipment; and,
 - (4) Avoid work interruptions.
- (b) For these purposes, the Contractor shall:
- (1) Comply with regulations and standards issued by the Secretary of Labor at 29 CFR Part 1926. Failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96), 40 U.S.C. 3701 et seq.; and
 - (2) Include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.
- (c) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 CFR Part 1904.
- (d) The Contracting Officer shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.
- (e) The Contractor shall be responsible for its subcontractors' compliance with the provisions of this clause. The Contractor shall take such action with respect to any subcontract as the PHA, the Secretary of Housing and Urban Development, or the Secretary of Labor shall direct as a means of enforcing such provisions.

14. Temporary Heating

The Contractor shall provide and pay for temporary heating, covering, and enclosures necessary to properly protect all work and materials against damage by dampness and cold, to dry out the work, and to facilitate the completion of the work. Any permanent heating equipment used shall be turned over to the PHA in the condition and at the time required by the specifications.

15. Availability and Use of Utility Services

- (a) The PHA shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the PHA or, where the utility is produced by the PHA, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.
- (b) The Contractor, at its expense and in a manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the PHA, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

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

- (a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed under this contract, and which do not unreasonably interfere with the work required under this contract.
- (b) The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance of this contract, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.
- (c) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. Prior to disturbing the ground at the construction site, the Contractor shall ensure that all underground utility lines are clearly marked.
- (d) The Contractor shall shore up, brace, underpin, secure, and protect as necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected by the excavations or other operations connected with the construction of the project.
- (e) Any equipment temporarily removed as a result of work under this contract shall be protected, cleaned, and replaced in the same condition as at the time of award of this contract.

- (f) New work which connects to existing work shall correspond in all respects with that to which it connects and/or be similar to existing work unless otherwise required by the specifications.
- (g) No structural members shall be altered or in any way weakened without the written authorization of the Contracting Officer, unless such work is clearly specified in the plans or specifications.
- (h) If the removal of the existing work exposes discolored or unfinished surfaces, or work out of alignment, such surfaces shall be refinished, or the material replaced as necessary to make the continuous work uniform and harmonious. This, however, shall not be construed to require the refinishing or reconstruction of dissimilar finishes previously exposed, or finished surfaces in good condition, but in different planes or on different levels when brought together by the removal of intervening work, unless such refinishing or reconstruction is specified in the plans or specifications.
- (i) The Contractor shall give all required notices to any adjoining or adjacent property owner or other party before the commencement of any work.
- (j) The Contractor shall indemnify and save harmless the PHA from any damages on account of settlement or the loss of lateral support of adjoining property, any damages from changes in topography affecting drainage, and from all loss or expense and all damages for which the PHA may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.
- (k) The Contractor shall repair any damage to vegetation, structures, equipment, utilities, or improvements, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

17. Temporary Buildings and Transportation of Materials

- (a) Temporary buildings (e.g., storage sheds, shops, offices, sanitary facilities) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the PHA. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.
- (b) The Contractor shall, as directed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

18. Clean Air and Water

The contractor shall comply with the Clean Air Act, as amended, 42 USC 7401 et seq., the Federal Water Pollution Control Water Act, as amended, 33 U.S.C. 1251 et seq., and standards issued pursuant thereto in the facilities in which this contract is to be performed.

19. Energy Efficiency

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

20. Inspection and Acceptance of Construction

- (a) Definitions. As used in this clause -
 - (1) "Acceptance" means the act of an authorized representative of the PHA by which the PHA approves and assumes ownership of the work performed under this contract. Acceptance may be partial or complete.
 - (2) "Inspection" means examining and testing the work performed under the contract (including, when appropriate, raw materials, equipment, components, and intermediate assemblies) to determine whether it conforms to contract requirements.
 - (3) "Testing" means that element of inspection that determines the properties or elements, including functional operation of materials, equipment, or their components, by the application of established scientific principles and procedures.
- (b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. All work is subject to PHA inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.
- (c) PHA inspections and tests are for the sole benefit of the PHA and do not: (1) relieve the Contractor of responsibility for providing adequate quality control measures; (2) relieve the Contractor of responsibility for loss or damage of the material before acceptance; (3) constitute or imply acceptance; or, (4) affect the continuing rights of the PHA after acceptance of the completed work under paragraph (j) below.
- (d) The presence or absence of the PHA inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specifications without the Contracting Officer's written authorization. All instructions and approvals with respect to the work shall be given to the Contractor by the Contracting Officer.
- (e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The PHA may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The PHA shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

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Material delivered to the Contractor at locations other than the site may also be taken into consideration if the Contractor furnishes satisfactory evidence that (1) it has acquired title to such material; (2) the material is properly stored in a bonded warehouse, storage yard, or similar suitable place as may be approved by the Contracting Officer; (3) the material is insured to cover its full value; and (4) the material will be used to perform this contract. Before any progress payment which includes delivered material is made, the Contractor shall furnish such documentation as the Contracting Officer may require to assure the protection of the PHA's interest in such materials. The Contractor shall remain responsible for such stored material notwithstanding the transfer of title to the PHA.

- (h) All material and work covered by progress payments made shall, at the time of payment become the sole property of the PHA, but this shall not be construed as (1) relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or, (2) waiving the right of the PHA to require the fulfillment of all of the terms of the contract. In the event the work of the Contractor has been damaged by other contractors or persons other than employees of the PHA in the course of their employment, the Contractor shall restore such damaged work without cost to the PHA and to seek redress for its damage only from those who directly caused it.
- (i) The PHA shall make the final payment due the Contractor under this contract after (1) completion and final acceptance of all work; and (2) presentation of release of all claims against the PHA arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. Each such exception shall embrace no more than one claim, the basis and scope of which shall be clearly defined. The amounts for such excepted claims shall not be included in the request for final payment. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned.
- (j) Prior to making any payment, the Contracting Officer may require the Contractor to furnish receipts or other evidence of payment from all persons performing work and supplying material to the Contractor, if the Contracting Officer determines such evidence is necessary to substantiate claimed costs.
- (k) The PHA shall not; (1) determine or adjust any claims for payment or disputes arising there under between the Contractor and its subcontractors or material suppliers; or, (2) withhold any moneys for the protection of the subcontractors or material suppliers. The failure or refusal of the PHA to withhold moneys from the Contractor shall in nowise impair the obligations of any surety or sureties under any bonds furnished under this contract.

28. Contract Modifications

- (a) Only the Contracting Officer has authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing.
- (b) The Contracting Officer may modify the contract unilaterally (1) pursuant to a specific authorization stated in a contract clause (e.g., Changes); or (2) for administrative matters which do not change the rights or

responsibilities of the parties (e.g., change in the PHA address). All other contract modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer.

- (c) When a proposed modification requires the approval of HUD prior to its issuance (e.g., a change order that exceeds the PHA's approved threshold), such modification shall not be effective until the required approval is received by the PHA.

29. Changes

- (a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract including changes:
 - (1) In the specifications (including drawings and designs);
 - (2) In the method or manner of performance of the work;
 - (3) PHA-furnished facilities, equipment, materials, services, or site; or,
 - (4) Directing the acceleration in the performance of the work.
- (b) Any other written order or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances and source of the order and (2) that the Contractor regards the order as a change order.
- (c) Except as provided in this clause, no order, statement or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.
- (d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for a adjustment based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days (5 days for oral orders) before the Contractor gives written notice as required. In the case of defective specifications for which the PHA is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.
- (e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause, or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting a written statement describing the general nature and the amount of the proposal. If the facts justify it, the Contracting Officer may extend the period for submission. The proposal may be included in the notice required under paragraph (b) above. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.
- (f) The Contractor's written proposal for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following details:

- (1) Direct Costs. Materials (list individual items, the quantity and unit cost of each, and the aggregate cost); Transportation and delivery costs associated with materials; Labor breakdowns by hours or unit costs (identified with specific work to be performed); Construction equipment exclusively necessary for the change; Costs of preparation and/ or revision to shop drawings resulting from the change; Worker's Compensation and Public Liability Insurance; Employment taxes under FICA and FUTA; and, Bond Costs when size of change warrants revision.
- (2) Indirect Costs. Indirect costs may include overhead, general and administrative expenses, and fringe benefits not normally treated as direct costs.
- (3) Profit. The amount of profit shall be negotiated and may vary according to the nature, extent, and complexity of the work required by the change. The allowability of the direct and indirect costs shall be determined in accordance with the Contract Cost Principles and Procedures for Commercial Firms in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31), as implemented by HUD Handbook 2210.18, in effect on the date of this contract. The Contractor shall not be allowed a profit on the profit received by any subcontractor. Equitable adjustments for deleted work shall include a credit for profit and may include a credit for indirect costs. On proposals covering both increases and decreases in the amount of the contract, the application of indirect costs and profit shall be on the net-change in direct costs for the Contractor or subcontractor performing the work.
- (g) The Contractor shall include in the proposal its request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the contract in its entirety.
- (h) The Contracting Officer shall act on proposals within 30 days after their receipt, or notify the Contractor of the date when such action will be taken.
- (i) Failure to reach an agreement on any proposal shall be a dispute under the clause entitled Disputes herein. Nothing in this clause, however, shall excuse the Contractor from proceeding with the contract as changed.
- (j) Except in an emergency endangering life or property, no change shall be made by the Contractor without a prior order from the Contracting Officer.

30. Suspension of Work

- (a) The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the PHA.
- (b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified (or within a reasonable time if not specified) in this contract an adjustment shall be made for any increase in the cost of performance of the contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have

been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or for which any equitable adjustment is provided for or excluded under any other provision of this contract.

- (c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and, (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

31. Disputes

- (a) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under the contract, unlike a claim relating to the contract, is a claim that can be resolved under a contract clause 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 clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- (b) Except for disputes arising under the clauses entitled Labor Standards - Davis Bacon and Related Acts, herein, all disputes arising under or relating to this contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.
- (c) All claims by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the PHA against the Contractor shall be subject to a written decision by the Contracting Officer.
- (d) The Contracting Officer shall, within 60 (unless otherwise indicated) days after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made.
- (e) The Contracting Officer's decision shall be final unless the Contractor (1) appeals in writing to a higher level in the PHA in accordance with the PHA's policy and procedures, (2) refers the appeal to an independent mediator or arbitrator, or (3) files suit in a court of competent jurisdiction. Such appeal must be made within (30 unless otherwise indicated) days after receipt of the Contracting Officer's decision.
- (f) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

32. Default

- (a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with the diligence that will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within this time, the Contracting Officer may, by written notice to the Contractor, terminate the right to

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- (c) The Contractor shall agree to post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor/Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a that the Contractor is in non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor/seller may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(i) The contractor/seller will include the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub[contractor/seller] or vendor. The [contractor/seller] will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the [contractor/seller] becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the [contractor/seller] may request the United States to enter into such litigation to protect the interests of the United States.

(j) Compliance with the requirements of this clause shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act and the Indian Preference clause of this contract.

40. Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development 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 Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- (g) 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).

41. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

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

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

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

- (a) The Contractor agrees to comply with Section 1352 of Title 31, United States Code 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, and 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, grant, loan, or cooperative agreement.
- (b) The Contractor further agrees to comply with the requirement of the Act to furnish a disclosure (OMB Standard Form LLL, Disclosure of Lobbying Activities) 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.

44. Royalties and Patents

The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall save the PHA harmless from loss on account thereof; except that the PHA shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified and the Contractor has no reason to believe that the specified design, process, or product is an infringement. If, however, the Contractor has reason to believe that any design, process or product specified is an infringement of a patent, the Contractor shall promptly notify the Contracting Officer. Failure to give such notice shall make the Contractor responsible for resultant loss.

45. Examination and Retention of Contractor's Records

- (a) The PHA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.
- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
- (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to (1) appeals under the Disputes clause of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the PHA, 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.

46. Labor Standards - Davis-Bacon and Related Acts

If the total amount of this contract exceeds \$2,000, the Federal labor standards set forth in the clause below shall apply to the development or construction work to be performed under the contract.

- (a) Minimum Wages.
 - (1) All laborers and mechanics employed under this contract in the development or construction of the project(s) involved will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the regular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall

be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (2) (i) Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met: (A) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (B) The classification is utilized in the area by the construction industry; and (C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employee Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.
- (iii) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.
- (iv) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (a)(2)(ii) or (iii) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in classification.
- (3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the

amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

- (b) Withholding of funds. HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working in the construction or development of the project, all or part of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.
- (c) Payrolls and basic records.
- (1) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working in the construction or development of the project. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (2) (i) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1214-0149.)
- (ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (A) That the payroll for the payroll period contains the information required to be maintained under paragraph (c) (1) of this clause and that such information is correct and complete;
- (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and
- (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by subparagraph (c)(2)(ii) of this clause.
- (iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (3) The Contractor or subcontractor shall make the records required under subparagraph (c)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to

make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

- (d) (1) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (2) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under

- the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (3) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- (e) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.
- (f) Contract termination; debarment. A breach of this contract clause may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.
- (g) Compliance with Davis-Bacon and related Act requirements. All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (h) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this clause shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the PHA, HUD, the U.S. Department of Labor, or the employees or their representatives.
- (i) Certification of eligibility.
- (1) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a United States Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (3) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.
- (j) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.
- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in subparagraph (j)(1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic (including watchmen and guards) employed in violation of the provisions set forth in subparagraph (j)(1) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in subparagraph (j)(1) of this clause.
- (3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in subparagraph (j)(2) of this clause.
- (k) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause, and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.

47. Non-Federal Prevailing Wage Rates

- (a) Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under State or tribal law to be prevailing, with respect to any employee in any trade or position employed under the contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate exceeds:
 - (1) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141 et seq.) to be prevailing in the locality with respect to such trade;
- (b) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor (DOL) or a DOL-recognized State Apprenticeship Agency; or
- (c) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

48. Procurement of Recovered Materials.

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

"General Decision Number: MN20210105 05/28/2021

Superseded General Decision Number: MN20200105

State: Minnesota

Construction Type: Building

Counties: Crow Wing, Kittson, Lake of the Woods, Mahnommen, Marshall, Norman, Red Lake, Roseau, Traverse, Wadena and Wilkin Counties in Minnesota.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/01/2021
1	01/22/2021
2	02/05/2021
3	04/23/2021
4	05/28/2021

ASBE0034-001 06/01/2020

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR.....	\$ 39.25	34.90

BOIL0647-008 03/01/2018		

	Rates	Fringes
BOILERMAKER.....	\$ 37.22	27.14

BRMN0001-014 05/01/2018		

	Rates	Fringes
BRICKLAYER.....	\$ 32.92	22.66

CARP0068-009 05/01/2018		
	Rates	Fringes
SOFT FLOOR LAYER.....	\$ 29.57	19.86

CARP1934-003 05/04/2020		
	Rates	Fringes
CARPENTER (Includes Drywall Hanging, and Form Work, and Excludes Soft Floor Layer).....	\$ 27.03	18.71

ENGI0049-002 05/01/2020		
	Rates	Fringes
POWER EQUIPMENT OPERATOR		
Bulldozer.....	\$ 40.93	21.70
Crane.....	\$ 42.69	21.70
Forklift.....	\$ 40.93	21.70
Oiler.....	\$ 38.30	21.70

IRON0512-024 05/03/2020		
	Rates	Fringes
IRONWORKER, REINFORCING.....	\$ 38.35	30.70

* LAB00563-053 01/01/2021		
	Rates	Fringes
LABORER (ASBESTOS ABATEMENT (Removal from Ceilings, Floors, and Walls)).....	\$ 37.40	19.09

PAIN0681-006 05/01/2018		
	Rates	Fringes
PAINTER (Spray).....	\$ 29.66	16.94

PAIN1324-002 02/26/2018		
	Rates	Fringes
GLAZIER.....	\$ 30.43	14.90

PLAS0633-009 05/01/2019		
	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 32.28	17.70

PLUM0539-006 05/01/2020		
	Rates	Fringes

PIPEFITTER (HVAC Pipe
June 15, 2021

Installation Only).....\$ 37.64 31.42

ROOF0096-020 06/01/2019

Rates Fringes

ROOFER.....\$ 33.64 18.36

SFMN0669-004 04/01/2021

Rates Fringes

SPRINKLER FITTER (Fire
Sprinklers).....\$ 39.18 23.22

SHEE0010-048 04/04/2020

Rates Fringes

SHEET METAL WORKER (Excludes
HVAC Duct and Unit
Installation).....\$ 39.59 25.32

* UAVG-MN-0003 01/01/2019

Rates Fringes

LABORER: Pipelayer.....\$ 31.45 16.32

* UAVG-MN-0004 01/01/2019

Rates Fringes

OPERATOR: Loader.....\$ 31.87 20.30

Rates Fringes

DRYWALL FINISHER/TAPER.....\$ 24.64 10.04
PAINTER (Brush and Roller).....\$ 28.64 16.43

SUMN2015-040 06/22/2018

Rates Fringes

ELECTRICIAN.....\$ 27.76 16.96

HVAC MECHANIC (Installation
of HVAC Duct and Unit).....\$ 27.29 15.19

IRONWORKER, STRUCTURAL.....\$ 31.61 22.85

LABORER: Common or General.....\$ 21.40 14.51

LABORER: Mason Tender - Brick...\$ 23.25 15.77

OPERATOR:
Backhoe/Excavator/Trackhoe.....\$ 25.22 8.59

PIPEFITTER (Excludes HVAC
Pipe Installation).....\$ 27.95 15.82

PLUMBER.....\$ 27.95 15.82

TILE SETTER.....\$ 24.38

12.63

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

June 15, 2021

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
June 15, 2021

U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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June 9, 2021

John Schommer
HRA of Brainerd
410 East River Road
Brainerd, MN 56401

Re: Letter of Recommendation
HRA of Brainerd – 2021 Boiler/Water Heater & Mechanical Upgrades Project
Brainerd, MN
TKDA Project No. 18157.000

Dear Mr. Schommer:

Enclosed for your review and approval is a copy of the tabulation of bids for all bidders received on the Project Bid Date. On June 9, 2021, 2 Bids Received were considered for the above referenced project. **Northern Air Corporation (NAC Mechanical & Electrical)** provided the lowest bid. TKDA has thoroughly evaluated the bid by **NAC Mechanical & Electrical** and have determined them to be responsive and responsible, and that the contract price is considered fair and reasonable.

TKDA hereby recommends authorization to award the construction contract to **NAC Mechanical & Electrical** in the amount of **\$839,315.00**.

If you have any questions, please contact me directly at 218.428.3697 or greg.cooper@tkda.com.

Sincerely,

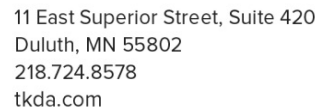
Gregory Cooper, Project Manager

Attachment: Bid Tabulation
Sign-in sheet

GJC:slv

BID OPENING 6/8/2021

<u>NAME</u>	<u>COMPANY</u>	<u>PHONE # / EMAIL</u>
Greg Cooper	TKDA	218-498-3697 greg.cooper@tkda.com
Mike Post	HRA	218-839-1093 MPost@BrainerdHRA.org
John Schommer	Brainerd HRA	218-824-3432 john@brainerdhra.org
Pam Kuechle	Project One	320-398-7000
Corey Huberty	NAC MECH	612-322-4696



HRA of Brainerd - Northstar Apartments

2021 Boiler/Water Heater and Mechanical Upgrade Project

BID OPENING: Tuesday, June 08, 2021 2:00 P.M.

June 15, 2021