

# IMPORTANT NOTICE

This copy of the Request for Proposals is for  
INFORMATIONAL PURPOSES ONLY

Any party seeking to submit a proposal **MUST** request a copy of the RFP from the BHA Procurement Department.

Submission copies of the RFP are available to Proposers via email request to [bids@bostonhousing.org](mailto:bids@bostonhousing.org) free of charge (Please include complete contact information with the request). Hard copy RFP Packages may be obtained for a non-refundable fee of \$100.00 payable by check or money order to the BHA on or after 5/29/2015 from the BHA, Contract Office, 6<sup>th</sup> floor, 52 Chauncy Street, Boston, MA 02111. The RFP package will be mailed to prospective respondents upon request for an additional \$15.00 fee.

**Request For Proposals  
Developer Services for Maryellen McCormack Re-Development  
BHA Job No.: 1416-01**

The Boston Housing Authority invites qualified real estate development firms to submit proposals for the disposition and redevelopment of its Maryellen McCormack public housing site. The development comprises 1016 units of federally subsidized public housing in 27 3-story walk-up and row-house buildings and a management office, all of brick and concrete construction. The entire site occupies approximately 27 acres in South Boston. The disposition of the parcel is subject to approval by the U.S. Department of Housing and Urban Development (HUD). RFP packages are available via email request to [bids@bostonhousing.org](mailto:bids@bostonhousing.org) free of charge. Hard copy RFP Packages may be obtained for a non-refundable fee of \$100.00 payable by check or money order to the BHA on or after 3/1/2017 from the BHA, Contract Office, 6<sup>th</sup> floor, 52 Chauncy Street, Boston, MA 02111. The RFP package will be mailed to prospective respondents upon request for an additional \$15.00 fee. A non-mandatory pre-proposal conference will be held on **Friday, March 10 at 11:00 am** on the **11<sup>th</sup> Floor** of the BHA's offices at 52 Chauncy Street. Proposals will be received at the above address until **Wednesday, May 3, 2017 at 2:00pm**. Questions or requests for modifications regarding this RFP will be accepted in writing only until Monday, March 13, 2017 at 2:00pm and must be submitted to Dan Casals, Deputy Administrator, BHA, 52 Chauncy Street, 6<sup>th</sup> Fl., Boston, MA 02111 or via email to [bids@bostonhousing.org](mailto:bids@bostonhousing.org) or via facsimile to 617-988-4292. The BHA reserves the right to reject any proposals and waive any informalities if it be in the public interest to do so.

**REQUEST FOR PROPOSALS**  
**Developer Services for Mary Ellen McCormack**  
**Disposition and Development**  
**BHA Job No. 1416-01**

**March, 2017**

**PART I: INTRODUCTION**

The Boston Housing Authority ("BHA") invites qualified real estate development firms (each a "Proposer") to submit proposals for the disposition and redevelopment of its Mary Ellen McCormack public housing development ("Development"). The Development comprises 1016 units of federally subsidized public housing in 27 3-story walk-up and row-house buildings and a management office, all of brick and concrete construction. The management office is located at 10 Kemp Street, South Boston, MA 02127. The entire site occupies approximately 27 acres.

The BHA's goal is to leverage the market value of the property in order to (a) avoid displacement of low-income residents, (b) preserve affordability for extremely low-income households, and (c) ensure long-term operational sustainability. The successful Proposer (the selected "Developer") must demonstrate the ability and experience to implement a comprehensive plan to achieve that goal.

Following the selection process, the BHA will issue a Letter of Designation to the selected Developer. The Developer must agree to accept the terms of the Letter of Designation, the Development Agreement ("Development Agreement"), and the other documents referenced in or attached to this RFP. The Developer, with cooperation from BHA and pursuant to the Letter of Designation, will carry out a comprehensive physical needs assessment of the property as well as site investigations pursuant to an access agreement (e.g., environmental and geotechnical studies) needed to finalize the redevelopment program and to secure funding for the project. Upon completion of the needs assessment and site investigations, the BHA will approve the redevelopment program and schedule and will execute the Development Agreement with the selected Developer, who will be expected to implement the redevelopment plan in accordance with the approved program and schedule.

The redevelopment of Mary Ellen McCormack is anticipated to involve the disposition of the site via a 99-year ground lease to the selected Developer. Such disposition is contingent upon HUD approval of the BHA's disposition plan. It is anticipated that the redevelopment will occur in multiple phases, each with separate Ground Leases, schedules and disposition approvals. The BHA will consider the disposition in fee of those phases intended for homeownership, subject to a right of reversion if construction is not completed as required. In addition, all agreements are subject to HUD review and approval prior to final execution. Additional review and approval requirements may apply.

This RFP consists of this document, documents referenced in this RFP and the following attachments:

1. Request for Proposal Notice
2. Required Forms (Appendix A)
3. Form of Letter of Designation (Appendix B)
4. Minority and Women's Participation and M/WBE Utilization Requirements (Appendix C-1)
5. Resident Employment Provision: Construction Contracts (Appendix C-2)
6. Fee Proposal (Appendix D)
7. Site Plan, excluding a sub parcel of the Development on O'Connor Way (Appendix E)
8. Enterprise Green Communities Criteria (Appendix F)
9. Responsibility Checklist (Appendix G)
10. Energy Efficiency and Sustainability Criteria (Appendix H)
11. HUD Safe Harbor and Cost Control Standards (Appendix I)
12. Form of Development Agreement (Appendix J)
13. Form of Ground Lease (Appendix K)
14. Form of Memorandum of Agreement for Resident Participation (Appendix L)

#### **A. Submission Instructions**

Proposers responding to this RFP are required to submit eight (8) copies and one (1) original of their proposal and shall provide one (1) electronic copy of the non-fee portion of their proposal on CD-R, DVD-R, or flash drive media. This submission should be in a single Adobe PDF format file, although Microsoft Office files (Word, Excel) are also acceptable.

Proposers shall submit their proposals to: BHA Contract Office, Dan Casals, Deputy Administrator, Boston Housing Authority, 52 Chauncy Street, 6<sup>th</sup> Floor, Boston, MA 02111, on or before **May 3, 2017 at 2:00pm**, by mail or hand delivery. Each proposal must be in a sealed enveloped marked with the Proposer's name, address, and telephone number. The Proposer is required to submit the fee and non-fee portions of their proposal under separate cover as follows:

1. One envelope shall be marked: "Proposal for Disposition and Redevelopment of Mary Ellen McCormack, BHA Job No. 1416-01 Qualification Statement, Development Plan and Required Forms."
2. The second envelope shall be marked: "Proposal for Disposition and Redevelopment of Mary Ellen McCormack, BHA Job No. 1416-01: Fee."

Proposals must comply with the requirements of the RFP as set forth herein. The BHA will not accept or review proposals received after the designated submission deadline. The BHA reserves the right to extend the time for receipt of proposals.

#### **B. Pre-Proposal Conference**

A non-mandatory pre-proposal conference will be held on **March 10, 2017 at 11:00 am** on the 11<sup>th</sup> Floor of the BHA's offices at 52 Chauncy Street, Boston, MA 02111.



### **C. Inquiries or Requests for Modifications**

Inquiries or requests for modifications regarding this RFP will be accepted in writing until **March 13, 2017 at 2:00pm** ("Inquiry Deadline"), and should be submitted in writing to Dan Casals, Deputy Administrator, Boston Housing Authority, 52 Chauncy Street, 6<sup>th</sup> Floor, Boston, MA 02111 or via email to [bids@bostonhousing.org](mailto:bids@bostonhousing.org) or via facsimile to 617-988-4292. Email preferred.

On or before the Inquiry Deadline, Proposers must promptly notify the BHA of any ambiguity, inconsistency, or error they may discover upon examination of this RFP and all documents attached hereto or referenced herein. Further, Proposers must notify the BHA of any term(s) in any document attached to this RFP to which the Proposer has an objection or is unwilling to execute. Requested modifications to any term or to any attachment to the RFP not submitted in writing on or before the Inquiry Deadline will not be reviewed or considered by the BHA unless the BHA, in its sole and absolute discretion and judgment, determines any such changes are minor in nature and not prejudicial to fair competition. Responses to inquiries and modifications, if acceptable to the BHA, to the terms of any attachment to this RFP will be issued as an addendum to every individual or firm on record as having received the RFP from the BHA.

### **D. Contact with Residents**

Unless provided with prior permission from the BHA, Proposers shall not be in contact with the residents of the Development. All communications prior to developer designation shall be directed to the BHA. Direct or indirect contact with residents, other than through the BHA, may disqualify the Proposer.

### **E. Evaluation Process**

Proposals shall be reviewed and evaluated by a selection committee composed of BHA staff and others appointed by the BHA Administrator or his designees (the "BHA Selection Committee").

Evaluation of proposals shall be reviewed by the BHA Selection Committee in six phases: (1) all eligible proposals shall be reviewed for compliance with the Minimum Evaluation Requirements (see Part IV.A, below); (2) all proposals satisfying the Minimum Evaluation Requirements shall be evaluated based on the Comparative Evaluation Criteria (see Part IV.B, below); (3) the BHA Selection Committee shall rank the proposers based on the Comparative Evaluation Criteria; (4) Fee Proposals will be opened and evaluated; (5) all proposers determined to be eligible for award may be required to present themselves before the BHA Selection Committee for clarification and review of their proposals; (6) the most advantageous proposal, with price and all evaluation factors considered, including proposed revisions, will be recommended to the Administrator for contract award.

Contract award is subject to the approval of the BHA Administrator. The BHA expressly acknowledges that the contract may be awarded to a Proposer who does not submit the lowest fee to the BHA.

## **PART II: MARY ELLEN MCCORMACK REDEVELOPMENT PROGRAM OBJECTIVES**

### **A. Background**

In developing its current Five-Year Agency Plan—and in recognition of the structural federal operating deficit and inadequate capital improvement funding shortfalls that are only expected to persist—BHA resolved to develop an asset management strategy to ensure the long-term sustainability of its public housing communities. Through a Request for Qualifications issued in November 2014 (BHA Job No. 1160-01) BHA sought the input of the development community in identifying opportunities to capitalize on the value of BHA properties in high-market neighborhoods as a means to preserve and expand its affordable housing portfolio. BHA's Mary Ellen McCormack development has emerged as a promising site to leverage the strength of the local market.

### **B. Program Objectives**

Completed in 1938, the Development currently comprises 1016 units of federal public housing, broken down as follows:

413 1-Bedroom Units

447 2-Bedroom Units

156 3-Bedroom Units

1016 Total Units

The goal is to preserve or replace the 1016 units of public housing with an equal number of deeply subsidized units (the "Replacement Units"). The new unit mix should align with the existing mix. The Developer will be responsible for demolishing existing buildings in association with new construction, and/or completing comprehensive, market-quality green rehab of existing buildings.

It is the BHA's intention to minimize off-site relocation for the project. Therefore, it is suggested that the first phase of replace significantly more affordable units than are demolished. For example, the row houses along O'Callaghan Way could make way for denser housing. The BHA is providing this example not to dictate an approach but only to emphasize the need for strategies that minimize off-site relocation.

The Developer may propose to create additional non-Replacement Units (i.e., non-deeply subsidized units); however each phase of the redevelopment, on a cumulative basis when combined with prior phases, should include at least as many Replacement Units as the number of currently existing public housing units that need to be taken off line. This is to avoid a situation where public housing units that exist today have been lost without a sure plan for replacing them.

To the extent that the redevelopment plan includes market-rate housing units in addition to the Replacement Units, the proposer must provide market data to support its proposal. Similarly the proposer must provide market data to support any retail or other non-residential uses that are proposed. As a requirement for moving ahead with any development plan, the selected developer must commission a full-fledged market study for each phase of redevelopment. Proposals must mix market and affordable housing without any differences in finishes or quality of construction. Segregated affordable and market buildings are not acceptable.

Rehousing Existing Tenant Households. Each relocated public housing tenant household that wishes to return to a Replacement Unit may return if (a) the tenant was in good-standing at the time of departure from the housing prior to relocation and continued to remain in good-standing during the relocation period; (b) the tenant is determined income-eligible; and (c) the appropriate unit size is available. A returning tenant shall be provided a preference for occupancy of Replacement Units before such units are made available to any other eligible household. In the event that more relocated households seek to return than the newly constructed Replacement Units can accommodate or if there is a bedroom mismatch, the BHA will conduct a Re-Occupancy Lottery to make assignments to the Replacement Units in a fair and equitable manner, and unhoused tenants will remain on the appropriate waiting list. The preference is retained even if the tenant has received permanent relocation benefits until the initial lease-up of the new Replacement Units is complete or until an appropriate size unit is offered.

Phasing and Designation Timeframe. It is anticipated that at least a three-year planning process will be needed prior to any construction start for the first phase of development. The Developer will have a mutually agreed upon timeframe from the time of Designation to close and begin Phase One, and up to an additional 24 months to complete this phase (the "Designation Timeframe"). These timeframes may be extended at BHA's discretion. BHA will extend the Designation Timeframe for remaining phases as plans become solidified for future phases. If, during the Designation Timeframe, the selected Developer is de-designated, the Developer shall assign and transfer all rights, drawings, studies, and other materials to a new developer or to BHA or to a nonprofit instrumentality of the BHA, as directed by the BHA.

Physical and Community Sustainability. A significant objective in the redevelopment effort at Mary Ellen McCormack is to implement energy efficiency and healthy homes principles, and to promote health and wellness within the redeveloped community. The program should meet or exceed the criteria laid out in Appendix H. BHA is not expecting respondents to submit construction details or energy analyses as part of their proposals; however, the selected Developer must affirm its commitment to meeting these criteria. In addition to the specific criteria listed in Appendix H, the project must:

- To the greatest extent possible, meet HUD's Enterprise Green Communities mandatory and optional criteria.
- Achieve certifiability as LEED Gold or better under the appropriate LEED rating system—e.g., LEED for Homes, Building Design and Construction, or Neighborhood Development. (See <http://usgbc.org> for specific criteria.)
- To the greatest extent possible, incorporate facilities and programs into the redevelopment that encourage resident health and wellness.

Cost Effectiveness. Developer shall maximize the replacement of the existing public housing units, and adopt methods and materials that minimize the total development and operational costs. The Developer shall explore all possibilities for designing and constructing high-quality sustainable housing that meets a reasonable cost standard for construction. The BHA expects the Developer to engage architects, general contractors, building trades, and others to

dramatically decrease per unit hard costs without sacrificing quality of design or construction.

Financing. BHA is seeking proposals that maximize private financing and financial structuring that does not rely on scarce, competitive affordable housing resources such as 9% low-income housing tax credits as well as City and State soft subsidies. The BHA will work with HUD to secure the most sustainable operating subsidy structure for Replacement Units through available programs such as the Rental Assistance Demonstration program or the Project Based Voucher (Section 8) program; however no existing operating resources from BHA, including Section 8's, are available for this project (i.e. new vouchers will have to be secured if that is what is proposed). BHA does not anticipate that any HUD capital resources will be available to the redevelopment. In evaluating proposals received in response to this RFP, BHA will score higher those proposals that present a realistic financing structure that does not draw on scarce and competitive resources.

Because BHA will not have any identified capital resources to provide to the redevelopment of Mary Ellen McCormack, the Developer will be required to identify funding to cover all costs of redevelopment, including relocation, demolition, and BHA legal, administrative and other third-party consultant costs. In addition, BHA will require a developer fee equal to one-third of the developer fee earned by the Developer (in order to achieve a 75%-25% split between the Developer and BHA)—see Part III.G below. The BHA's developer fee may be structured as an alternative type of fee (e.g., acquisition fee), and BHA will consider deferring or reinvesting all or a part of its fee at its sole discretion and in the best interests of the redevelopment.

Neighborhood. The Developer will be required to work closely with the South Boston neighborhood community during the design process to ensure that design, parking, traffic and other concerns are addressed.

Employment Opportunities. The Developer shall optimize construction and long-term employment opportunities through the redevelopment process. This includes opportunities for BHA residents, current BHA employees, subject to federal and state ethics laws (MGL c. 268A), minority and women-owned business enterprises, and minority and women workers. All work shall be subject to applicable wage rate requirements.

Community Space, Resident Organization Space and Services Programming Space.

The Developer is expected to provide adequate facilities for on-site services programming, community events, and for the operation of a resident organization.

### **C. Role of BHA**

The respective roles of BHA and the Developer are described in the following sections. Also, Appendix E presents the "Mixed-Finance Responsibility Checklist" that BHA typically follows for large-scale redevelopment projects. While the redevelopment of Mary Ellen McCormack is not envisioned as a typical mixed-finance redevelopment, the checklist nevertheless provides details on BHA's expectations regarding respective roles in the redevelopment process. BHA intends to maintain an active role in overseeing the redevelopment of Mary Ellen McCormack and an asset management role in the operations of the property. BHA's oversight through the ground lease will be to ensure continued deep affordability of the Replacement Units, preservation of tenancy rights of the extremely low-income residents, and responsible, sustainable management of the property.

Land Owner/Asset Manager. The BHA or an instrumentality of the BHA will be the landowner/ground lessor. As landowner and asset manager, BHA will be concerned with preserving long-term asset value through attentive property management, and ensuring that the applicable affordable housing requirements are being met. As part of its asset management responsibilities, BHA will monitor and enforce the terms of its Ground Lease, management agreement and other transaction documents that will be executed among BHA, the Developer, and other parties.

Relocation Manager. BHA is experienced in relocation as a result of its prior redevelopment efforts, and, therefore, will be responsible for any relocation required as part of the Mary Ellen McCormack redevelopment including counseling, scheduling, and moving services to facilitate the redevelopment process and to allow for coordinated construction activities. BHA will procure a relocation advisor to assist with relocation activities. All costs associated with relocation must be covered by development funds secured by the Developer.

#### **D. Role of the Developer**

The Developer will be an integral collaborator with BHA and will be required to work closely with BHA throughout the redevelopment effort. Please see the Responsibility Checklist (Appendix G) for a description of the Developer's scope of service requirements. In addition to and complementing the items on the attached Responsibility Checklist—and in addition to other sections and attachments to this RFP—the Developer will be required to do the following:

Unit Mix. Ensure that the unit mix for the Replacement Units takes into account the household composition of existing Mary Ellen McCormack residents and the needs of households on the Mary Ellen McCormack public housing waiting list. In order to facilitate the comparative evaluation of proposals, for the purposes of this RFP, Proposers should assume the existing unit mix for Replacement Units across the redevelopment.

The BHA intends to create a consistent distribution of affordable and market units at the site, such that all buildings are mixed to the greatest extent possible, and all-market or all-affordable units are avoided. There should be no differences in finishes or features for affordable versus market units.

High quality and Environmentally Responsible Design and Construction. Ensure that the project is designed and constructed with the highest quality materials and workmanship. Proposers must be willing to implement an environmentally responsible building design that integrates the best in natural and engineered technologies. (See Part II.B for a detailed description of sustainability criteria.)

Accessibility. Ensure that at least 5% of the Replacement Units be accessible as defined by the Uniform Federal Accessibility Standard (UFAS). Of these UFAS compliant units, 2% must be made accessible for persons with visual and hearing impairments. This means that the project as a whole, taking into account other non-replacement units, may have a higher percentage of accessible units. Visitability and universal design principles should be incorporated into the new housing and neighborhood design as much as possible.

Project Financing. The Developer is responsible to secure all project financing, including resources to cover BHA costs. Proposals will be prioritized that minimize the use of scarce City and State affordable housing resources.

Permitting and other Regulatory Approvals. The Developer is responsible to secure all land use, permitting and other regulatory approvals for the project. BHA will be the point of contact for HUD approvals, with assistance from the Developer on submission materials.

Schedule. The Developer will be responsible for maintaining the proposed schedule and meeting any funder-required milestones.

#### **E. Resident and Community Role**

Consultation with the residents of the community is fundamental to the successful implementation of the program. The Proposer must submit a plan that outlines the means by which meaningful resident and community consultation will be achieved through the planning and implementation of the Proposer's program. The Developer will be expected to involve residents of the Mary Ellen McCormack public housing development first and foremost, and the broader South Boston community throughout the redevelopment process and in future operations of the property.

#### **F. Public Procurement Requirements**

As with previous public housing redevelopment initiatives, the BHA intends to seek legislative relief from any and all Commonwealth of Massachusetts general or special laws relating to the procurement and award of contracts for the construction, reconstruction, installation, demolition, maintenance or repair of the buildings to be constructed on the property in conjunction with the proposed redevelopment. Notwithstanding this, BHA expects the project will remain subject to sections 26 to 27H, inclusive, of chapter 149 of the General Laws as well as provisions of section 39M of chapter 30 of the General Laws relating to the construction, reconstruction, alteration, remodeling or repair of any publicly owned public works which may service the project and any federal procurement requirements to the extent applicable. Proposers are directed to Article 7.08 of the Development Agreement for a more detailed description of the various applicable federal requirements and restrictions relating to construction and procurement with respect to the Development.

Further, the BHA will not consider any information regarding the construction contractor as part of this RFP process. At a minimum, the BHA will require that the construction be competitively priced. The development team will be responsible for issuing a Request for Proposals including schematic design documents to at least three general contractors (GCs) for Guaranteed Maximum Price (GMP) Proposals. Beyond qualifications and cost, the primary criteria for GC selection will be general conditions, overhead, and project mark-ups.

#### **G. Legal Structure**

Mary Ellen McCormack was developed under the United States Housing Act of 1937 (the "Act") and, depending on the funding requirements and financing structure of the redevelopment, the Replacement Units may remain subject to use and operating restrictions under the terms of the Act and the Quality Housing and Work Responsibility Act of 1998. The BHA or an instrumentality of the BHA will retain legal title to the land, and will grant a Ground Lease to the Developer, in substantially the form attached hereto as Appendix K.



## H. Environmental Disclosure

The BHA has identified four historic releases at Mary Ellen McCormack, which have been closed out under the Massachusetts Contingency Plan. The submittals for the closed releases are available for download at MassDEP's online database, searchable by Release Tracking Number (RTN) at: <http://public.dep.state.ma.us/SearchableSites2/Search.aspx>

The releases are identified as follows:

- ) RTNs 3-19440 and 19441 – In 2000, a threat of release of oil from two 35,000-gallon No. 4 fuel oil underground storage tanks (USTs) was identified when several small holes were observed on the exteriors of the USTs. MassDEP assigned RTNs 3-19440 and 19441 to each of the USTs. The USTs were taken out of service and new, temporary aboveground storage tanks (ASTs) were installed. No evidence of releases from the holes were observed. Subsurface investigations to evaluate soil and groundwater conditions around the USTs were performed and identified some contamination that was associated with fill materials and possibly tar-like materials, but this contamination was not attributed to the USTs (refer to RTN 3-20596 below).

In 2001, the USTs were filled with flowable fill and abandoned in place rather than removed because of the boiler plant building and an MBTA noise abatement wall that were adjacent to the USTs. The contamination in soil did not pose a significant risk according to a risk characterization. The RTNs were closed under the MCP regulations in 2002 after a Class A-1 RAO was submitted to MassDEP, and a Permanent Solution was achieved.

- ) RTN 3-20596 – As part of the subsurface investigations to evaluate soil and groundwater conditions around the USTs under RTNs 3-19440 and 3-19441, elevated petroleum hydrocarbons were identified in soil that were believed to be related to a localized deposition of fill material. Based on subsequent investigations, including drilling and test pit excavation, roofing paper, cinders, and other debris were observed in subsurface soils. There were plans to remove the roofing material; however, the roofing material extended beneath a fill slope that supported several large trees, making it infeasible to remove the roofing material.

It was ultimately concluded that the elevated contaminant concentrations were representative of roofing material and not soil. The reportable concentrations in the MCP apply to concentrations of oil or hazardous materials in soil; therefore, the concentrations of contaminants associated with the roofing material were not in excess of the reportable concentrations and did not represent a release of OHM to the environment. No remedial actions are necessary since there was not a release, and site conditions are representative of background. The RTN was closed under the MCP regulations in 2003 after a Class B-1 RAO was submitted to MassDEP, and a Permanent Solution was achieved.

- ) RTN 3-26782 – As part of a planned utility project, MassDEP was notified of a Utility-related Abatement Measure in 2007 because of known oil and metals contamination in the subsurface. Contamination was related to urban fill conditions. During excavation

of soil for the utility installations, soil was inspected and screened. Excess soil was sampled for off-site disposal. As part of the URAM, more than 1,000 tons of soil was excess soil was removed from the site. A URAM Completion Report was submitted to MassDEP in 2007 to close the URAM.

Each RTN was closed under the MCP regulations after an RAO was submitted to MassDEP. The sites were cleaned up to standards allowing for unrestricted future use of the property.

The Developer will have the opportunity to conduct site investigations pursuant to an access agreement prior to financial closing. The Developer will be responsible for conducting any remediation needed as part of the Mary Ellen McCormack redevelopment.

#### **I. Financing Prepayment Disclosure**

At Mary Ellen McCormack the BHA previously financed capital improvements under HUD's Capital Fund Financing Program (CFFP). Disposition and redevelopment of Mary Ellen McCormack may require the prepayment of a portion of the CFFP financing attributable to Mary Ellen McCormack. The Developer will be required to work with the BHA with respect to the redevelopment financing if such prepayment is required. The cost of prepayment will depend on several factors, including the size and the actual timing of each phase of redevelopment. Once it is known, the Developer will be required to include the cost of prepayment in its project budget as an acquisition cost or other project cost.

#### **J. Grounds for De-Designation**

At its sole discretion, the BHA may de-designate the selected Developer for the following reasons:

1. The Developer becomes bankrupt, goes into receivership, or is no longer operational for some other reason;
2. The Developer fails to retain the development team members included in its proposal (or, as needed, to substitute development team members—or augment the development team with new members—approved by the BHA) or otherwise breaches a requirement under this RFP or the Letter of Designation;
3. The BHA discovers any of the grounds for rejection of proposals stated in Part III.E below;
4. The BHA determines that the Mary Ellen McCormack redevelopment is not feasible for some other reason; or
5. The Developer proposes material alterations or changes to the proposed Development Plan, for example with respect to the following:
  - a. Need for (or ability to access) local and state public resources
  - b. Relocation/rehousing agreements and guarantees
  - c. Project phasing, particularly the timing of constructing Replacement Units
  - d. Utilization of union labor
  - e. Ground Lease restrictions



### **PART III: PROPOSAL REQUIREMENTS**

The following provides information on what the proposal must contain and how it must be organized. The purpose of this information is to establish the requirements, order and format for responses to ensure that the proposals are complete, include essential information and can be fairly evaluated. Proposers are requested to be specific and concise and to avoid duplicative materials and redundancies in the proposal. The BHA has not set a page limit for proposals but it prefers efficiently worded, substantive proposals to lengthy responses containing more general, boilerplate language. Prepare your proposal in the following order, with explicit references to the specific sections below:

#### **A. Cover Letter**

The cover letter must list the development team members and identify the primary contact person. Please include telephone number, facsimile number, and e-mail address. The cover letter must be signed by an authorized principal of the Developer's firm and include a statement that the proposal will remain valid for not less than 180 days from the date of the BHA Administrator's approval.

#### **B. Team Experience and Qualifications**

1. Team Description: The Developer's team must, at a minimum, include developer entity, architect (including experts in sustainability, green building and experience with designing buildings that incorporate the Enterprise Green Building Criteria and the other criteria listed in Part II.B), engineers, legal counsel and property manager. Provide general information on the Developer and the development team, including the following:
  - ) Contact person, title, telephone/facsimile numbers and e-mail address;
  - ) Name of Developer, main address, telephone/facsimile numbers, and e-mail address;
  - ) Address, telephone/facsimile numbers of office from which services will be provided, if different from above;
  - ) Description of firm size, number of employees, and a description in time and dollar value of projects in the pipeline;
  - ) Proposed role of Developer within development team;
  - ) Identify the individual who will serve as the Project Manager for the development team and who will direct and coordinate the development effort through completion. Describe the Project Manager's prior and current experience with projects of similar anticipated scope and size, with particular emphasis directing a multi-disciplinary team and facilitating a community involvement process;
  - ) List the remaining members of the development team and provide an Organization Chart. All entities that comprise the team must be identified, indicating their specialization(s), relevant experience, and specific contribution to the team. These entities should include architect, lawyer, property manager and any other firms and professionals who will be part of the team.
  - ) Provide a description of the development team's prior experience working together. In addition, provide examples of the team's prior and current experience (within the last five years) with projects of anticipated similar scope

size and complexity, as well as experience in Boston, if any. Please include information about the development team's experience in planning, implementing, and managing physical redevelopment, financing, leveraging, and partnership activities for affordable and market-rate rental as well as mixed-use development.

- J Please provide information regarding the team's experience in designing and constructing sustainable and green buildings. Specifically provide information regarding the team's experience in designing and constructing buildings that meet the criteria included in Part II.B).
- J Provide a narrative description backed up by specific statistics of the team's previous expertise in integrating resident employment, minority and women employment, and contracts with MBE/WBE/Local firms into the overall development of similar projects. Proposers must provide resident employment opportunities organized by age group, types of jobs to be provided, eligibility requirements for obtaining a job, and methodology for tracking resident employment.
- J If the Development Plan includes market-rate housing, identify the market consultant (firm or individual) and provide information on the experience of the Developer's team members in designing, managing, and financing market-rate and mixed-income properties. Also identify potential investors.

2. Profile of Developer: Provide an overview of the Developer's experience in the planning, construction, and management of projects similar to what is proposed at the Development. Include the following information for the last five years:

- J Identify all mixed-income efforts in which the Developer has been or is currently involved.
- J List all affordable and mixed income rental housing projects successfully completed, identifying the states where they are located, the size of the tax credit allocations and tax-exempt bond allocations received, who the investor was and how much the investor paid for the tax credits (expressed in cents per dollar), whether bonds were rated (if so, by what entity) or unrated. Specify the number of units and the income groups served, the per-unit cost of each project, and the period of time it took to complete the project. Please provide this information by year.
- J Provide examples evidencing Developer's experience with ownership and property management (either directly or through supervision of property management provided by a third party). Include information about income groups served and operating deficit history, and for both residential and commercial show absorption and current occupancy.
- J For each project listed, the Developer must disclose and explain: current financial default of more than 60 days duration; mortgage assignment or workout arrangement; foreclosure and/or bankruptcy; litigation related to financing or construction of the project which is pending or which was adjudicated within the past five years with a finding against the Developer; and real estate tax delinquencies.
- J Identify any conditions that may be grounds for proposal rejection in Section III.E or de-designation in Section II.J.

- J Attach the three most recent concurrent years of audited or certified public accountant prepared financial statements from each entity of the development team who will be providing any guarantees in connection with the development and operation of the project and for each rental development owned and/or operated by any member of the Developer's team and/or their affiliate(s) that achieved 95% construction completion by December 2014, the annual audits for each of 2012 and 2013 and 2014 (if available). The statements must include an Income Statement as well as a Balance Sheet showing assets, liabilities and net worth of the entity. Please also submit three bank references for the Developer. Financial statements and bank references may be placed in a separate sealed envelope. Note, however, that all materials included with the proposal are considered public records.
- J Provide a statement indicating how the Developer will honor all financial guarantees, should the need arise. The statement should include more than a reference to the Financial Statements, and may include a letter of credit or other approach.
- J In addition to the bank references, references should be submitted for the Developer, including:
  - o Construction and permanent lenders
  - o LIHTC limited partner investors
  - o Public sector financing partners (HFA, PHA)
  - o General contractors on a comparable development
  - o Community groups that worked with the Developer on a project.
- J Team personnel and experience to achieve the design, green building, and healthy homes criteria identified in Part II.B above.

### 3. Profiles of Developer's Team Members:

- J Describe the experience of the law firm and the key staff assigned to this project in structuring and negotiating complex market and affordable housing development, City of Boston and BPDA permitting and land use processes, and HUD public housing, Section 8, mixed-finance or other requirements.
- J Describe the experience of the architect and the key staff, including engineers, assigned to this project in addressing urban site planning issues, including the following: multi-family affordable and market-rate rental housing; LIHTC projects; working with diverse low-income residents; creating affordable housing designs that appropriately balance concerns for quality of life, cost efficiency and optimizing land use; leading an integrated design process that results in a high quality, sustainable design that strongly promotes green building and healthy housing strategies; designing and constructing LEED-certified buildings that also meet the Enterprise Green Building Criteria; designing and constructing cost effective units; and going through the permitting of large projects in the City of Boston, including a community review process and the BPDA land use approval process.
- J Describe the experience of the property management firm in managing urban low-income family rental housing as well as market housing, particularly

developments involving LIHTC and HUD reporting requirements.

- J If the Development Plan includes market-rate housing, describe the experience of the team members (Developer and/or market consultant) in planning and marketing market-rate and mixed-income developments, as well as the track record of potential investors in financing market-rate and mixed-income developments.
  - J Provide three references for each entity of the development team. In providing references, please provide name, title, organization name, telephone numbers, and e-mail addresses. Please specify the name of the project with which the reference is familiar. Please ensure that all names and numbers are current.
4. Assigned Staff: Failure to assign the identified staff of the Developer and development team members will be considered a material breach of contract. In the event that any of the named personnel departs a firm that is a member of the Proposer's team during the term of the contract (including any extension period), the Proposer shall be required to replace such personnel with personnel of comparable experience and expertise and to assign such new personnel to provide services under the Contract, subject to BHA review and approval.

### C. Development Plan

1. General. BHA is seeking proposals that evidence the capacity of the development team to work with the BHA, Mary Ellen McCormack public housing residents, the broader Mary Ellen McCormack community, and elected officials in an effort to balance the variables presented herein. Proposers are required to submit a specific redevelopment plan. The BHA expressly acknowledges that the location and specific programming of the units may change; the total number of units and associated Developer Fee, subject to HUD and other lender cost control standards, will remain comparable even if the location or unit mix changes.

The development plan should reflect the BHA's programmatic goals and potential limitations or restrictions that are described elsewhere in this document. The Proposer should feel free to increase density by adding additional housing units (including market-rate units) or non-residential square footage so long as: (1) the development plan includes a clear rationale for these decisions, and (2) the proposal includes relevant market data in support of these decisions and the Developer indicates a commitment to commissioning future market studies.

The plan should indicate clearly how the deeply subsidized Replacement Units will be funded for operations and, if utilizing LIHTCs, if there are any LIHTC-only units versus LIHTC units that are also subsidized under other subsidy programs.

The development plan should include a narrative that sets the context for the design, financing, management and timeline aspects of the Proposal. At a minimum, the development plan should address space programming (i.e., number and size of units, community/management/social service space), housing tenure type, and the advantages and disadvantages of the development plan. As part of its development plan, the Proposer should include a sample rehousing guarantee. The development plan should also provide detail, including a budget for incorporating an integrated design process, green

technologies, Enterprise Green Criteria, healthy homes measures into the project, and the other criteria included in Part II.B.

The Developer must state in the development plan its position and reasoning with respect to what happens to the property and reserves at the end of the 15-year tax credit compliance period. In particular, this section must address the Developer's plan for continued affordability after the tax credit compliance period and confirmation that most if not all of the reserves will be owned by the BHA (or an affiliate of the BHA) or otherwise utilized with BHA approval to ensure the continued affordability of the project.

2. Design Concepts. Proposers under this RFP must submit conceptual architectural drawings as needed to describe key design concepts, including assumptions about density, building typology and, as applicable, integration of market-rate and affordable housing. Proposers must demonstrate the capacity and experience of the team's architect to undertake the project and to achieve the BHA's programmatic goals.
3. Financing Structure. Submit a financial plan that includes a complete development pro forma. Note: The financial plan must exclude the developer fee and overhead, BHA asset management fee, and the portion of the developer fee that will go to the BHA. (These fees will be included separately in the Fee Proposal.) The financial plan must include a statement of sources and uses excluding the BHA asset management fee, developer fee and BHA portion of the developer fee, and a 15-year operating pro forma, breaking operating expenses into typical, separable categories. There should be no funding gaps in the operating budget. In providing this financial information, clearly identify any of the following: development contingencies, capital and operating reserves, trending assumptions, and tax credit equity yield assumptions. Submit a pre-development sources and uses budget that identifies all tasks and costs from tentative designation to closing, including start and end dates for each task. The Proposer must demonstrate the availability of working capital to cover pre-development costs (including BHA's costs) by providing proof of cash availability (i.e., bank statement) or identify a source of funds.
4. Market Strategy. If the proposal provides for market-rate units, describe the anticipated market, the strategy for attracting market-rate residents, and the marketing strategies that would be employed in the redevelopment and ongoing operational stages of the project. Proposers must submit specific market data and must commit to commissioning market studies in conjunction with each phase of redevelopment.
5. Management Plan. The BHA is deeply committed to excellent professional property management. Discuss how day-to-day operations will be handled. Discuss the strategy for sustaining professional excellence, resident satisfaction and high performance in managing the Replacement Units over the long term.
6. Legal and Ownership Structure. The BHA or an instrumentality of the BHA contemplates executing the Ground Lease in substantially the form attached hereto with the procured Developer for this project. The proposal must describe the proposed ownership structure identifying the various legal entities involved in the ownership of the development. The role proposed for the BHA should be clearly described as well, including specific development responsibilities. Joint Ventures: With respect to the development entity, equity investors,

and the management company, a precise description of any joint venture arrangements, including prospective equity and decision making interest shall be provided.

7. Resident Participation. Submit an outline of the means by which meaningful resident participation will be achieved through the planning and implementation of the Proposer's development plan. Be specific about the residents' role in decision-making. Discuss issues and obstacles related to meaningful resident participation. The Developer or its owner entity(ies) will be required to commit to funding resident participation after redevelopment by executing an MOA in the form attached hereto as Appendix M.
8. Minority and Women Participation and M/WBE Utilization. The selected Developer must comply with certain requirements concerning minority and women participation and M/WBE utilization, as further described below.
9. Resident Employment Obligations. The selected Developer must comply with the BHA's Resident Employment Provision, as further described below, including submission of a formal Resident Employment Plan as a condition of designation. Note that BHA's Resident Employment Policy makes reference to Section 3 requirements typically related to the use of federal public housing funds. While such funds may not be used in this redevelopment, it is the BHA's intention to apply the same Section 3 goals and requirements to the redevelopment.

#### **D. Required Forms**

Proposers must complete and submit the following forms and certifications contained in Appendix A:

1. Employee Information: Personnel by Classification
2. Minority/Women-Owned Business Participation
3. REAP Certificate, if applicable
4. Verification of Tax Reporting, if applicable
5. Debarment and Conflict of Interest Certification
6. Resident Employment Provision Form 1
7. Resident Employment Provision Form 2
8. Contract Questionnaire
9. Disclosure of Beneficial Interests in Real Property Transaction
10. Real Estate RFP Disclosure Statement
11. HUD Subgrantee/Contractor/Subcontractor Certifications and Assurances

#### **E. Other Criteria**

The following shall be grounds for proposal rejection at the BHA's sole discretion:

- ) Proposer or any member of proposer's team has ever owned property upon which the City of Boston or the BHA foreclosed due to failure to pay real estate taxes or a loan secured by a mortgage to the City of Boston or the BHA.
- ) Proposer or any member of proposer's team currently owes the City of Boston and/or the BHA any monies for incurred real estate taxes, payments in lieu of taxes, fees, rents, water and sewer charges, or other indebtedness.

- J Proposer or any member of proposer's team has ever been convicted of an arson-related crime or is currently under indictment for any such crime.
- J Proposer or any member of proposer's team has been convicted within the last three (3) years of violating any law, code, or ordinance regarding conditions of human habitation, fair housing or housing discrimination, or tenant harassment, or is currently under indictment for any such violations.

#### **F. Registration of Foreign Entities**

If the selected Proposer (the Developer) is a foreign corporation or other entity, then prior to execution of the contract, the Developer shall register with the Massachusetts Secretary of the Commonwealth and name a resident agent pursuant to M.G.L.c.156D, section 15.07 or other applicable statute.

#### **G. Fee Proposal**

The Proposer is required to submit its Fee Proposal in a separate sealed envelope in accordance with the requirements of Part I.A.2, using the form provided in Appendix D. The Fee Proposal shall be executed by a representative of Proposer who is legally authorized to enter into a contractual relationship in the name of Proposer.

The Proposer must submit one Fee Proposal, which shall contain the following four components: (a) total fee, including overhead, to be paid to the Developer ("Developer Fee"); (b) total fee to be paid to the BHA ("BHA Fee"); (c) Total Development Fee (Developer Fee plus BHA Fee); and (d) asset management to be paid to the BHA from operations. In calculating the fee, Proposers must be mindful of the fee limits described in HUD's Safe Harbor standards.

Proposals must assume that the developer fee payable to the BHA equals one-third of the developer fee paid to the Developer (in order to achieve a 75%-25% split between the Developer and BHA). Ultimately the BHA's developer fee may be structured as an alternative type of fee (e.g., acquisition fee), and BHA will consider deferring or reinvesting all or a part of its fee at its sole discretion and in the best interests of the redevelopment.

Proposers' fees should assume that BHA receives legislative relief from any and all Commonwealth of Massachusetts general or special laws relating to the procurement and award of contracts (see Part II.F and Article 7.08 of the Development Agreement).

**Note: Do not include these fees in the Development Plan or Pro Forma.**

#### **PART IV: EVALUATION PROCESS**

##### **A. Minimum Evaluation Requirements**

Compliance with all Part I.A and Part III instructions and requirements.

##### **B. Comparative Evaluation Criteria**

The Proposer's Qualification Statement and Development Plan will be evaluated and rated based on a rating category of Unacceptable, Acceptable, Advantageous, or Highly Advantageous for each evaluation criteria as indicated below. Proposers will be ranked



according to the cumulative rating obtained for the comparative evaluation criteria. The maximum score will be 16 points. The composite scores will correspond to the following categorical rankings:

Highly Advantageous	10 – 16	points
Advantageous	4 – 9	points
Acceptable	2 – 3	points
Unacceptable	0 – 1	point

**1. Qualifications of Development Team**

**8 Points**

UNACCEPTABLE (0 Points)

Information regarding the composition of the development team and staffing is incomplete or otherwise fails to demonstrate the qualifications required for a score of “Acceptable.”

ACCEPTABLE (1 Point)

The proposal presents a complete team and a precise staffing plan; team members demonstrate the following qualifications:

- ) The Developer principal(s) have direct experience comprising at least 7 years and not less than 5 projects, in structuring and implementing complex market and affordable housing projects, including 5 projects involving real estate syndication in which the developer has an ownership interest; Developer’s experience includes at least one affordable rental project which involved a community review process; Developer demonstrates ample experience to ensure oversight of the redevelopment objectives outlined in Part II; if the Development Plan includes market-rate housing, the Developer demonstrates ample experience with market-rate development of a comparable scale.
- ) Lead attorney has experience in structuring and closing at least 5 real estate finance transactions involving multiple financing sources and tax credit syndication, as well as experience in City of Boston permitting and land-use processes.
- ) Architect demonstrates experience in planning, design, permitting and construction of at least 3 multifamily affordable housing developments in an urban environment, with at least one involving a community review process; architect has ample experience to lead an integrated design process consistent with the sustainability objectives outlined in Part II; and if the Development Plan includes market-rate housing, the Architect demonstrates ample experience with the design of market-rate and mixed-income housing.
- ) Property Management Agent demonstrates experience managing family assisted-housing (and, if applicable, market-rate and mixed-income housing) for at least 5 years and has not been terminated for cause in the past 5 years.
- ) With regard to credit worthiness, the Developer has experienced no foreclosures, bankruptcies, delinquencies in real estate tax owed to the City of Boston, current defaults of more than 60 days, mortgage assignments or adjudication against the Developer nor other matters that may jeopardize Developer’s ability to secure financing.

ADVANTAGEOUS (2 – 4 Points)

The proposal demonstrates qualifications that meet the standard of “Acceptable” plus the following:



- J The Developer—principal(s) and the project manager(s)—has completed at least one project involving a similar income mix as the one proposed, and has experience working with low-income diverse communities; the Developer has closed at least one transaction with a similar financing structure to the one proposed; and Developer has specific and successful experience in employing green and healthy housing technologies.
- J Lead attorney has experience in structuring ground lease transactions and experience in structuring the financing and legal elements of at least one public housing mixed-finance redevelopment.
- J Architect demonstrates experience in the permitting, urban planning and design and construction of not less than 5 multifamily mixed-income housing developments in an urban environment including at least two such projects which were permitted within the City of Boston and included a community review process, at least one mid-rise project, and at least one project with an Energy Star rating and LEED certification.
- J Property Management Agent demonstrates experience managing family tax-credit and HUD assisted rental housing.

#### HIGHLY ADVANTAGEOUS

(5 – 8 Points)

The proposal demonstrates qualifications that exceed the standard of “Advantageous” and that align clearly with the proposed Development Plan so as to assure the team’s success in carrying out the Development Plan. Points shall be awarded for the meaningful participation of minority- or women-owned businesses and/or demonstrated commitment to (and prior success with) meeting minority, women, and resident employment and contracting goals.

#### **2. Quality of Development Plan**

**8 Points**

#### UNACCEPTABLE

(0 Points)

Plan (i) fails to address the Program Objectives set forth in Part II; (ii) fails to meet the Proposal Requirements in Part III; or (iii) is so vague or incoherent, or contains inconsistencies, such that the proposal is meaningless.

#### ACCEPTABLE

(1 Point)

Plan addresses the Program Objectives set forth in Part II and meets the Proposal Requirements in Part III. The overall discussion of the Development Plan, the design concepts and the financing structure are consistent.

#### ADVANTAGEOUS

(2 - 4 Points)

Plan meets the standard of “Acceptable” and exceeds that standard in that it includes a realistic and thoughtful discussion of the challenges inherent in the development program and the strategies for addressing such challenges. Plan is consistent with the phasing and Designation Timeframe established in Part II. Plan meets the sustainability, affordability, and cost-effectiveness objectives presented in Part II.

#### HIGHLY ADVANTAGEOUS

(5 - 8 Points)

Plan meets the standard of “Advantageous” and exceeds that standard as demonstrated by the degree to which relevant issues are precisely identified; underlying reasoning is articulated; and the Plan includes a relatively more thoughtful discussion of the challenges inherent in the

development program and the strategies for addressing such challenges. The Plan presents a realistic financing structure that minimizes or avoids reliance on scarce and competitive affordable housing development resources.

### **C. Fee Proposal**

A proposal will be selected that is the most advantageous to the BHA when both evaluations and fee are considered. A contract may be awarded to a Proposer who does not submit the lowest fee proposal.

### **D. References**

The BHA reserves the right to reject any proposals received solely on the basis of past poor performance as reported by the references. The BHA further reserves the right to refuse to consider any claimed item(s) of work that, in the sole discretion of the BHA was not substantially similar to the work described in this RFP; was not successfully performed to the reasonable satisfaction of other customers; was not performed by the proposer under its present name (or by a differently-named but essentially identical business entity); or is not verifiable through the reasonable efforts of the BHA.

## **PART V: BHA CONTRACT OPPORTUNITIES PROGRAMS**

### **A. MBE/WBE Requirements**

It is the policy and practice of the BHA to encourage the participation of minority and women owned businesses in the procurement of goods and services. Developer must comply with the BHA's MBE and WBE goals presented in Appendix C-1 or such other goals as are required by other funders and are acceptable to the BHA. The BHA strongly encourages all Proposers to develop creative responses to this RFP that make use of joint ventures, partnerships, and other "team" approaches to the delivery of the Services. The BHA places a high value on the Proposer's approach to maximizing the meaningful participation and utilization of minority and women owned business.

The Proposer's Qualification Statement shall explain in detail how any proposed team approach, partnership, and/or joint venture will be structured; the proposed work and fee distribution arrangements; and corresponding allocation of contract responsibilities.

The BHA reserves the right to require documentation supporting a Proposer's claimed minority and/or women-owned business enterprise status. The BHA will utilize the following definitions to determine claimed status:

Minority Business Enterprise ("MBE"): A business organization that is owned or controlled 51% or more by one or more minority groups as defined by the Supplier Diversity Office ("SDO") formerly known as State office of Minority and Women Business Assistance and certified as such by SDO in the relevant service category.

Women-Owned Business Enterprise ("WBE"): A business organization that is owned and controlled 51% or more by one or more women and certified as such by SDO in the relevant service category.

Joint Venture: A joint or combined business agreement on a particular project between an SDO-certified MBE or WBE firms(s) and a non-SDO-certified firm in which the MBE and/or WBE

portion of the combination is valued at least 25% or more of the contracted amount.

#### **B. Resident Employment Requirements**

It is the policy of the BHA to maximize the meaningful participation of BHA residents in the procurement of goods and services in accordance with the terms and provisions of the Boston Housing Authority Resident Employment Provision ("REP"). The REP sets out certain employment, training, and contracting requirements for the contract with which Proposers shall comply, and to the extent feasible complies with the requirements of Section 3 of the Housing and Urban Development Act of 1968. The REP for construction contracts is attached hereto as Appendix C-2. The Developer and any of the entities with which it contracts must comply with the REP (a copy of which must be incorporated into each contract or subcontract). (Note that the REP makes reference to Section 3 requirements typically related to the use of federal public housing funds. While Orient such funds may not be used in this redevelopment, it is the BHA's intention to apply the Section 3 goals and requirements to the redevelopment.) The BHA places a high value on a Proposer's approach to providing meaningful participation of BHA residents in the provision of services under this RFP. All Proposers shall submit REP Forms 1 and 2 from the REP at Appendix C-2 with their proposals.

### **PART VI: GENERAL CONDITIONS OF THE RFP**

#### **A. RFP**

The RFP may be obtained for free via e-mail, or in hardcopy form for a \$100 fee from the BHA Contract Unit at the 6th Floor, 52 Chauncy Street Boston, MA 02111 starting March 1, 2017. The RFP Package shall be mailed to prospective respondents upon request for an additional \$15.00 fee. The BHA neither guarantees nor provides a warranty with respect to the timely receipt of the RFP by the Proposer in the event the RFP is mailed.

#### **B. Acceptance of RFP and Contract Terms**

Proposer's submission of a proposal in response to the RFP shall constitute acceptance by the Proposer of the terms and conditions of this RFP and the terms and conditions contained in all documents attached to and/or referenced in this RFP. In the event the BHA elects to designate the Proposer as the Developer pursuant to this RFP, the selected Developer agrees to enter into the Development Agreement and other transactional documents with the BHA in substantially the form appended to this RFP.

Please note: BHA reserves the right to modify the Development Agreement and other transactional documents appended to the RFP pursuant to further negotiation with the Developer to the extent reasonably necessary or appropriate to address site conditions, financing requirements, changes in applicable law or regulation, or other facts relating to the transaction(s) and/or parties not currently anticipated, provided such modifications are consistent with the body and intent of the RFP and are in the best interest of the BHA.

#### **C. Conditional Notice of Award and Contract Award**

Subject to the rights reserved in this RFP, the BHA will issue the Letter of Designation to the top-ranked Proposer(s) no later than **sixty (60) days** after the date designated for receipt of proposals. Issuance of the Letter of Designation is subject to the approval of the BHA Administrator and HUD, and it shall be conditioned on the successful negotiation of revisions, if

any, to the proposal recommended as part of the evaluation of proposals. The BHA reserves the right to de-designate a top-ranked Proposer and consider designation of the next highest ranked respondent in the event of a breach of the terms of the Letter of Designation or otherwise there are grounds for de-designation as described in Section II.J above. The Letter of Designation shall be effective during the Designation Time Frame as described in Section II.B above.

#### **D. No Warranty**

Proposers are required to examine the RFP, specifications, and instructions pertaining to the services requested. Failure to do so will be at the Proposer's own risk. It is assumed that the Proposer has made full investigation as to be fully informed as to the extent and character of the services requested and of the requirements of the specifications. No warranty is made or implied as to the information contained in the RFP, specifications, and/or instructions.

#### **E. Expense of RFP Submission**

All expenses incurred in the preparation and submission to the BHA of proposals in response to this RFP shall be borne by the Proposer.

#### **F. Compliance with Applicable Laws and Regulations**

The Proposer agrees to comply with the provisions of Chapter 151B of the Massachusetts General Laws, as amended, and with the requirements of Presidential Executive Order 11246, as amended, and all other relevant and applicable laws and/or regulations.

#### **G. BHA Reservation of Rights**

The BHA reserves the right to cancel this RFP, or to reject, in whole or in part, any and all proposals received in response to this RFP, upon its determination that such cancellation or rejection is in the best interests of the BHA. The BHA further reserves the right to waive any minor informalities in any proposals received, if it be in the public interest to do so. The determination of the criteria and process whereby proposals are evaluated, the decision as to who shall receive a contract award, or whether or not an award shall be made as a result of this RFP, shall be at the sole and absolute discretion of the BHA.

A proposal may be corrected, modified, or withdrawn, provided that the correction, modification, or request for withdrawal is made by the Proposer in writing and is received at the place and prior to the date and time designated in the RFP for receipt of proposals. After such date and time the Proposer may not change the proposal fee or any other provision of its proposal in a manner prejudicial to the interests of the BHA and/or fair competition.

#### **H. Insurance Requirements**

As a condition of contract award, the selected Developer must commit to obtaining the forms and amounts of insurance required by the contract documents. Please refer to the contract documents attached to this RFP for all applicable insurance requirements relating to this procurement, specifically but not limited to the Ground Lease and the Development Agreement.

BOSTON HOUSING AUTHORITY  
By its Administrator  
William E. McGonagle

## APPENDIX A

### REQUIRED FORMS

1. Employee Information: Personnel By Classification
2. Minority/Women-Owned Business Participation
3. REAP Certification, if applicable
4. Verification of Tax Reporting (W-9 Form)
5. Debarment and Conflict of Interest Certification
6. Resident Employment Provision – Form 1
7. Resident Employment Provision – Form 2
8. Subgrantee/Contractor/Subcontractor  
Certifications and Assurances
9. Disclosure of Beneficial Interests
10. Real Estate RFP Disclosure Statement
11. BHA Contract Form Questionnaire

## PERSONNEL BY CLASSIFICATION

	Minority Males		Minority Females		Non-Minority Males		Non-Minority Females		Total	Total
	Consultant	Sub-Consultant	Consultant	Sub-Consultant	Consultant	Sub-Consultant	Consultant	Sub-Consultant	Consultant	Sub-Consultant
Managerial										
Professional										
Technical										
Clerical										
Total										

BOSTON HOUSING AUTHORITY

[To be completed by all applicants, whether M/WBE or not.]

## MINORITY BUSINESS ENTERPRISE QUESTIONNAIRE

☐ Check here if Minority Business Enterprise status, as defined in the Request for Proposals, is claimed.

1. If you claim status as a Minority Business Enterprise, please fully describe the status.

2. If you intend to sub-contract on this project with a Minority Business Enterprise, please describe the nature of the sub-contract, description of work to be performed by the sub-contractor, and proposed price to be paid to the sub-contractor. Please attach a completed Letter of Intent (See Attached), signed (Original Only) by the MBE which confirms this description.

3. If you do not claim status as a Minority Business Enterprise, and you do not intend to sub-contract on this project with a Minority Business Enterprise, please explain why not.

4. \*\*\*Please attach all applicable State Office of Minority Business Assistance (SOMWBA) Certification letters.

## WOMEN BUSINESS ENTERPRISE QUESTIONNAIRE

☐ Check here if Women Business Enterprise status, as defined in the Request for Proposals, is claimed.

1. If you claim status as a Women Business Enterprise, please fully describe the status.

2. If you intend to sub-contract on this project with a Women Business Enterprise, please describe the nature of the sub-contract, description of work to be performed by the sub-contractor, and proposed price to be paid to the sub-contractor. Please attach a completed Letter of Intent (See Attached), signed (Original Only) by the WBE which confirms this description.

3. If you do not claim status as a Women Business Enterprise, and you do not intend to sub-contract on this project with a Women Business Enterprise, please explain why not.

4. \*\*\*Please attach all applicable State Office of Women Business Assistance (SOMWBA) Certification letters.



**BOSTON HOUSING AUTHORITY**  
**SOMWBA LETTER OF INTENT**

This form must be completed by each SOMWBA Certified Enterprise (SCE) and submitted by the prime consultant using the SCE.

Project Name:

Name of Prime Consultant:

Name of SCE:

1. My company intends to perform work in connection with the above-captioned project as:

- ☐ an individual
- ☐ a corporation
- ☐ a partnership
- ☐ a joint venture with:
- ☐ other (explain):

2. My company has been certified by SOMWBA as a ☐ MBE ☐ WBE ☐ MWBE and has not changed its ownership, control, or management in any way to affect certification.

3. My company understands that if your company is awarded the contract, your company intends to enter into an agreement to perform the work described below for the price indicated.

4. My company intends to (brief description of work):

for a total amount of: \_\_\_\_\_ (\$ \_\_\_\_\_ )

Authorized signature for SCE:

Date:

\_\_\_\_\_

\_\_\_\_\_

## REAP CERTIFICATE

### REAP CERTIFICATION

Pursuant to M.G.L. Chapter 62 ( c ), Section 49 (a), the individual signing this document on behalf of the Bidder, hereby certifies, under the penalties of perjury, that to the best of his/her knowledge and belief the Bidder has complied with any and all applicable state tax laws.

SIGNED

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Town, State and Zip Code

## Request for Taxpayer Identification Number and Certification

Give form to the  
requester. Do not  
send to the IRS.

Print or type See Specific Instructions on page 2.	Name	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/ Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other ▶ .....	<input type="checkbox"/> Exempt from backup withholding
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	
List account number(s) here (optional)		

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN).

**However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3.** For other entities, it is your employer identification number (EIN). If you do not have a number, see **How to get a TIN** on page 3.

**Note:** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number								
or								
Employer identification number								

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), **and**
2. I am not subject to backup withholding because: **(a)** I am exempt from backup withholding, or **(b)** I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or **(c)** the IRS has notified me that I am no longer subject to backup withholding, **and**
3. I am a U.S. person (including a U.S. resident alien).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

Sign  
Here

Signature of  
U.S. person ▶

Date ▶

### Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

**U.S. person.** Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

**Note:** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Foreign person.** If you are a foreign person, use the appropriate Form W-8 (see **Pub. 515**, Withholding of Tax on Nonresident Aliens and Foreign Entities).

### Nonresident alien who becomes a resident alien.

Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

### **Debarment and Conflict of Interest Certification**

The undersigned, a Respondent to the Request for Proposals ("RFP") issued by the Boston Housing Authority ("BHA"), hereby certifies to the BHA on behalf of itself and each member of Respondent's team, as follows:

(1) In accordance with 24 CFR 85.35, Respondent certifies that neither Respondent, nor any member of Respondent's team is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension"; and

(2) In accordance with M.G.L. C. 30B, §10, the undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the work "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

Respondent: \_\_\_\_\_  
(Name of Firm)

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

Name of Signatory: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Boston Housing Authority  
**Section 3 Provision: RFP**

**FORM 1**

**Certification of Intent to Comply with Section 3**

*This form is to be submitted by proposers with their proposal. Failure to submit this form may result in the rejection of your proposal.*

<b>HIRING</b>	<b>SUBCONTRACTING</b>
<input type="checkbox"/> New Hires/Trainees Projected	<input type="checkbox"/> Subcontracting Projected
<input type="checkbox"/> No New Hires/Trainees Projected	<input type="checkbox"/> No Subcontracting Projected

I hereby certify that:

1. I am the \_\_\_\_\_ [Insert Title] of \_\_\_\_\_  
\_\_\_\_\_ [Insert Name of Proposer] (the "Company");
  2. I am duly authorized by the Company to submit a proposal on its behalf to the Boston Housing Authority for \_\_\_\_\_  
[Insert Project Name and Number] and to execute any and all documents required to be filed as a condition of such proposal;
  3. I have read and understood the Section 3 Provision, which applies Section 3 of the Housing and Urban Development Act of 1968, as amended, and the Section 3 regulations found at 24 CFR 135.
  4. The Company will comply with the requirements of 24 CFR 135 and the Section 3 Provision. This includes ensuring that, to the greatest extent feasible, **at least thirty percent (30%) of new hires and trainees** will be Section 3 residents and **at least three percent (3%) of the contract value** for non-construction contracts will be awarded to Section 3 business concerns.
  5. The Company is responsible for the compliance of its subcontractors and will ensure that its subcontractors comply with the requirements set out in 24 CFR 135 and the Section 3 Provision.
  6. Any vacant positions filled after the contract award notification but before contract execution will not be filled to circumvent the Company's Section 3 obligations.
- Signed under the penalties of perjury.

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

Date: \_\_\_\_\_

By: \_\_\_\_\_  
[Signature]  
Duly Authorized

Boston Housing Authority  
**Section 3 Provision: RFP**

**FORM 2**

**Section 3 Hiring, Training, and Contracting Opportunities**

*This form is to be completed by the proposer on behalf of itself and all projected subcontractors, if any. Provide estimates of hiring and contracting needs on the project.*

**HIRING OPPORTUNITIES**

Job Category	Number of positions needed to complete project	Number of positions filled by current employees*	Number of positions to be filled by Section 3 Residents	Anticipated dates of work
<i>Example: Tenant Coordinator</i>	1	0	1	10/1/11-12/31/11
1) Professionals				
2) Technicians				
3) Office/Clerical				
4) Tenant Coordinator				
5) Other:				
<b>Totals</b>				

**SUBCONTRACTING OPPORTUNITIES**

Sub-trade and Company (if known)	Type of Business	Section 3 Business Concern? (Y/N)	Amount of Contract
<i>Example: HVAC Inc.</i>	<i>HVAC Engineering</i>	Y	8,000
1)			
2)			
3)			

\* **“Current employee”** means an employee who is on the payroll as of the date of the signature below. HUD considers an employee who has been laid off and is returning to the payroll to be a “new hire” for purposes of Section 3 compliance.

The above tables represent an accurate estimate of workforce and subcontracting needs for this project and also represent the number of Section 3 residents and business concerns that the company proposes to employ and/or contract with.

Signed under the penalties of perjury.

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

Date: \_\_\_\_\_

By: \_\_\_\_\_  
[Signature]  
Duly Authorized

## Disclosure of Beneficial Interests in Real Property Transaction

This form contains a disclosure of the names and addresses of all persons with a direct or indirect beneficial interest in the real estate transaction described below. This form must be filed with the Massachusetts Division of Capital Planning and Operations, as required by M.G.L. c. 7, §40J, prior to the conveyance of or execution of a lease for the real property described below. Attach additional sheets if necessary.

1. Public agency involved in this transaction: BOSTON HOUSING AUTHORITY  
(Name of jurisdiction)

2. Complete legal description of the property:

3. Type of transaction: ☐ Sale ☐ Lease or rental for \_\_\_\_\_ (term):

4. Seller(s) or Lessor(s): \_\_\_\_\_

Purchaser(s) or Lessee(s): \_\_\_\_\_

5. Names and addresses of all persons who have or will have a direct or indirect beneficial interest in the real property described above. *Note: If a corporation has, or will have a direct or indirect beneficial interest in the real property, the names of all stockholders must also be listed except that, if the stock of the corporation is listed for sale to the general public, the name of any person holding less than ten percent of the outstanding voting shares need not be disclosed.*

Name

Address

_____	_____
_____	_____
_____	_____
_____	_____

None of the persons listed in this section is an official elected to public office in the Commonwealth of Massachusetts except as noted below:

Name

Title or position

_____	_____
_____	_____

6. This section must be signed by the individual(s) or organization(s) entering into this real property transaction with the public agency named in item 1. If this form is signed on behalf of a corporation, it must be signed by a duly authorized officer of that corporation.

The undersigned acknowledges that any changes or additions to item 4 of this form during the term of any lease or rental will require filing a new disclosure with the Division of Capital Asset Management within 30 days following the change or addition.

The undersigned swears under the pains and penalties of perjury that this form is complete and accurate in all respects.

Signature: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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## **Subgrantee/Contractor/Subcontractor**

### **Certifications and Assurances**

Each Grantee must require all contractors and subcontractors to execute an original "Subgrantee/Contractor/Subcontractor Certifications and Assurances" form at the time the Grantee executes any contract with any subgrantee or contractor, and at the time any contractor executes any contract with any subcontractor, to provide goods or services under its Grant Agreement. The Grantee will retain the executed original certification together with the executed contract documents. A copy of the Certification form, which must be copied and used for each subgrantee, contractor, and subcontractor, follows.

INFORMATIONAL

COPY

November 17, 2000

## **SUBGRANTEE/CONTRACTOR/SUBCONTRACTOR CERTIFICATIONS AND ASSURANCES**

The following certifications must be made by subgrantees, contractors, and subcontractors of Project Grantees.

The subgrantee, contractor, or subcontractor executing this certification hereby assures and certifies that it will comply with all of the applicable requirements of the following, as the same may be amended from time to time:

1. the Fair Housing Act (42 U.S.C. 360 1-19) and regulations pursuant thereto (24 CFR part 100); Executive Order 11063 (Equal Opportunity in Housing) and regulations pursuant thereto (24 CFR part 107); and the fair housing poster regulations (24 CFR part 110);
2. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and regulations pursuant thereto (24 CFR part 1) relating to non-discrimination in housing;
3. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 610 1-07) and regulations issued pursuant thereto (24 CFR part 146);
4. The prohibitions against discrimination on the basis of disability (including requirements that the Grantee make reasonable modifications and accommodations and make units accessible) under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations issued pursuant thereto (24 CFR part 8); the Americans with Disabilities Act (42 U.S.C. 12101 et seq. and its implementing regulation at 28 CFR part 36; and the Architectural Barriers Act of 1968, as amended (42 U. S.C. 4151) and regulations issued pursuant thereto (24 CFR part 40);
5. Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) and its implementing regulation at 24 CFR part 135;
6. Executive Orders 11246, 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the Grantee must make efforts to encourage the use of minority and, women's business enterprises in connection with funded activities;
7. Subgrantees only must provide drug-free workplaces in accordance with the Drug-Free Workplace Act of 1988 (41 U.S.C. 701), and HUD's implementing regulations at 24 CFR part 24, subpart F. Each subgrantee must complete a Certification for a Drug-Free Workplace (Form HUD-50070) in accordance with 24 CFR 24.630.

8. The provisions of 24 CFR part 24 which apply to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

9. The following labor standards: Davis-Bacon or HUD-determined wage rates apply to development or operation of revitalized housing to the extent required under Section 12 of the U.S. Housing Act of 1937. In the case of demolition, Davis-Bacon wage rates apply to demolition followed by construction on the site; HUD-determined wage rates apply to demolition followed only by filling in the site and establishing a lawn. Under Section 12, the wage rate requirements do not apply to individuals who: perform services for which they volunteered; do not receive compensation for those services or are paid expenses, reasonable benefits, or a nominal fee for the services; and are not otherwise employed in the work involved (24 CFR part 70). In addition, if other Federal programs are used in connection with your HOPE VI Program, labor standards requirements apply to the extent required by the other Federal programs, on portions of the project that are not subject to Davis-Bacon rates under the Act.

10. The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, et seq.) and implementing regulations at 24 CFR parts 35 and 965 (subpart H) and section 968.100(k), as amended. Unless otherwise provided, it will be responsible for testing and abatement activities, if applicable.

11. a. Nonprofit subgrantees, contractors, or subcontractors will comply with the requirements, policies and standards of:

- i. 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations);
- ii. A-122 (Cost Principles for Non-Profit Organizations); and
- iii. the audit requirements of 24 CFR 84.26.

b. For-profit subgrantees, contractors, or subcontractors will comply with the requirements, policies and standards of:

- i. 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations); and
- ii. the contract cost principles and procedures set forth in 48 CFR part 31.
- iii. the audit requirements of 24 CFR 84.26.

c. Subgrantees, contractors, or subcontractors that are States, local governments, and Federally Recognized Indian Tribal Governments will comply with the requirements, policies, and standards of:

- i. 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments),

ii. the cost principles of OMB Circular A-87 (Cost Principles for State, Local and Indian Tribal Governments), and

iii. the audit requirements of 24 CFR 85.26.

12. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and government-wide implementing regulations at 49 CFR part 24.

13. Section 319 of Public Law 101-121, which prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government, and implemented for HUD at 24 CFR part 87, as the same may be amended from time to time. The contractor/subcontractor will disclose promptly any commitment or expenditure of non-appropriated funds for lobbying activities if those activities would be prohibited if paid with appropriated funds.

14. The following contract provisions must be placed in all contracts of the Grantee pursuant to 24 CFR 85.36 (i). Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(a) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(b) Termination for cause and for convenience by the Grantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

(c) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by Grantees and their contractors)

(d) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts for construction or repair)

(e) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by Grantees when required by Federal grant program legislation)

(f) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by Grantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)

(g) Notice of awarding agency requirements and regulations pertaining to reporting.

(h) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(i) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(j) Access by the Grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(k) Retention of all required records for three years after Grantees make final payments and all other pending matters are closed.

(l) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts and subcontracts of amounts in excess of \$100,000).

(m) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

The information contained in this certification is true and accurate, to the best of my knowledge.

\_\_\_\_\_  
Signature of Authorized Certifying Official

\_\_\_\_\_  
Title

\_\_\_\_\_  
Organization

\_\_\_\_\_  
Date

#### WARNING

Section 1001 of the Title 18 of the United States Code (Criminal Code and Criminal Procedure, 72 Stat.967) applies to this certification. 18 U.S.C. 1001, among other things, provides that whoever knowingly and willfully makes or uses a document or writing knowing the same to contain any false, fictitious or fraudulent statement or entry, in any matter within jurisdiction of any department or agency of the United States, shall be fined no more than \$10,000 or imprisoned for not more than five years, or both.

## Disclosure of Beneficial Interests in Real Property Transaction

This form contains a disclosure of the names and addresses of all persons with a direct or indirect beneficial interest in the real estate transaction described below. This form must be filed with the Massachusetts Division of Capital Planning and Operations, as required by M.G.L. c. 7, §40J, prior to the conveyance of or execution of a lease for the real property described below. Attach additional sheets if necessary.

1. Public agency involved in this transaction: BOSTON HOUSING AUTHORITY  
(Name of jurisdiction)

2. Complete legal description of the property:

3. Type of transaction: ☐ Sale ☐ Lease or rental for \_\_\_\_\_ (term):

4. Seller(s) or Lessor(s): \_\_\_\_\_

Purchaser(s) or Lessee(s): \_\_\_\_\_

5. Names and addresses of all persons who have or will have a direct or indirect beneficial interest in the real property described above. *Note: If a corporation has, or will have a direct or indirect beneficial interest in the real property, the names of all stockholders must also be listed except that, if the stock of the corporation is listed for sale to the general public, the name of any person holding less than ten percent of the outstanding voting shares need not be disclosed.*

Name

Address

_____	_____
_____	_____
_____	_____
_____	_____

None of the persons listed in this section is an official elected to public office in the Commonwealth of Massachusetts except as noted below:

Name

Title or position

_____	_____
_____	_____

6. This section must be signed by the individual(s) or organization(s) entering into this real property transaction with the public agency named in item 1. If this form is signed on behalf of a corporation, it must be signed by a duly authorized officer of that corporation.

The undersigned acknowledges that any changes or additions to item 4 of this form during the term of any lease or rental will require filing a new disclosure with the Division of Capital Asset Management within 30 days following the change or addition.

The undersigned swears under the pains and penalties of perjury that this form is complete and accurate in all respects.

Signature: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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**BOSTON HOUSING AUTHORITY  
REAL ESTATE RFP DISCLOSURE STATEMENT**

All respondents to a Boston Housing Authority ("BHA") request for proposals related to real estate development or disposition shall truthfully complete this statement and submit it with their proposals. Failure to submit an original completed and signed copy of this form with a respondent's proposal shall be grounds for proposal rejection.

For purposes of this form, the term "Principals" shall refer to and include the entity that is responding to this request for proposals as well as all individuals named in Section 5 of the respondent's "Disclosure of Beneficial Interests Form."

1. Are any of the Principals currently or formerly employed by the City of Boston or the BHA? If yes, in what capacity? (Please include name of agency or department, dates of employment, and position held in that agency or department).

---

2. Do any of the Principals own any real estate in Boston? If yes, where and what type of property?

---

3. Have any of the Principals ever owned property upon which the City of Boston foreclosed due to failure to pay real estate taxes or a loan secured by a mortgage to the City of Boston or the BHA?

---

4. Do any of the Principals currently owe the City of Boston and/or the BHA any monies for incurred real estate taxes, payments in lieu of taxes, fees, rents, water and sewer charges, or other indebtedness?

---



5. Have any of the Principals ever been convicted of any arson-related crimes or are currently under indictment for any such crime?

\_\_\_\_\_

6. Have any of the Principals been convicted within the last three (3) years of violating any law, code, or ordinance regarding conditions of human habitation, fair housing or housing discrimination, or tenant harassment, or are currently under indictment for any such violations?

\_\_\_\_\_

SIGNED under the pains and penalties of perjury this \_\_\_\_\_ day of

\_\_\_\_\_ 200\_\_ on behalf of \_\_\_\_\_  
(Name of Respondent)

Signature: \_\_\_\_\_

(Print Name) \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

# BHA CONTRACT FORM QUESTIONNAIRE

Page 1 of 3

## **Instructions to Respondent to BHA's RFP:**

In the event your firm's proposal is selected for award, your firm will be required to execute the contract form attached to the RFP without revisions. It is recommended that you review the contract form before submitting a proposal. Any questions or concerns regarding the form of the contract must be submitted to the BHA in writing prior to the RFP's proposal due date in accordance with the RFP's requirements. Your firm's proposal may be rejected if you fail to submit a completed version of this form with your firm's proposal.

**RESPONDENT:** Please provide the following information which will be used to finalize the contract form. Thank you for your cooperation.

**1.) Please indicate your firm's complete legal name** (e.g., John Smith, Co., Inc):

---

**2.) Please indicate your firm's organizational structure.** Typical business organizational types include: for-profit corporation; nonprofit corporation; general partnership; sole proprietorship; limited liability company; joint venture, etc. (this is not intended to be an exhaustive listing of business organizational types) (e.g., a for-profit corporation):

---

**3.) Please indicate the state where your firm was organized or is incorporated** (e.g., Massachusetts) \*\*:

---

**\*\* An out-of-state corporation or business must submit a certificate of registration from the Massachusetts Secretary of the Commonwealth upon BHA's request.**

**4.) Please indicate the complete address of your firm's home or principal office** (e.g., 52 Chauncy Street, Boston, Massachusetts 02111):

---

(Address)

# BHA CONTRACT FORM QUESTIONNAIRE

Page 2 of 3

5.) Please provide the complete name and title of the person who will have primary responsibility to administer the contract on behalf of your firm:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

6.) Please provide the complete name, title and address of the person who will be authorized to receive notices from the BHA with respect to the Contract:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Address)

7.) Please provide the complete name and title of the person who will be authorized to execute the Contract on behalf of your firm: \*\*

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

**\*\*Please attach your firm's certificate of authority  
(or equivalent) for the individual named above.**

# BHA CONTRACT FORM QUESTIONNAIRE

Page 3 of 3

## 8.) Please confirm the following:

- (a) I have reviewed the contract form attached to the RFP. My firm is willing and able to execute the contract without modifications or revisions.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

- (b) I have reviewed the contract's insurance provision. My firm is willing and able to fully comply with its terms. I agree to cause all required insurance certificates and documents to be delivered to the BHA within five (5) business days after my receipt of BHA's written request for such certificates and documents.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

Thank you. Your interest in working with the BHA is appreciated.

## APPENDIX B

\_\_\_\_\_, 2017

**RE: Letter of Designation  
Request for Proposals for Developer  
Mary Ellen McCormack Redevelopment, BHA Job No. 1416-01**

Dear \_\_\_\_\_:

I am pleased to inform you that the Boston Housing Authority ("Authority") hereby designates \_\_\_\_\_ as developer (the "Designated Developer") for the Mary Ellen McCormack redevelopment project, based on the Designated Developer's response to the above-referenced Request for Proposals ("RFP") submitted to the Authority on \_\_\_\_\_, 2017. This designation is subject to the terms of this Letter of Designation. All capitalized terms used herein have the same meaning as set forth in the RFP unless otherwise defined herein.

This designation is valid during the Designation Time Frame, as this term is defined in the RFP. Extensions may be granted at the sole option of the Authority.

After acceptance of this Letter of Designation, the Designated Developer shall: (1) execute the Development Agreement; (2) comply with all the terms, provisions, submission timeframes, and requirements of the RFP, the proposal, and the documents attached thereto; and (3) work closely with the existing Mary Ellen McCormack residents to finalize the disposition and redevelopment plan. The RFP and the proposal are expressly incorporated and made a part of this Letter of Designation.

For the reasons stated in the RFP, time is of the essence with respect to services and requirements to be performed by the Designated Developer pursuant to this Letter of Designation and the RFP. Accordingly, the Authority reserves the right to de-designate the Designated Developer and rescind this Letter of Designation in the event the Authority determines, in its sole discretion, that the Designated Developer has failed to comply with the terms hereof. Any such rescission shall not give rise to any cause of action for damages, costs, and/or claims for reimbursement of any type, nature, or amount against the Authority, its agents, or its funding agencies.

The Designated Developer acknowledges and agrees that it will not have any claim to or be eligible for payment, compensation, fees, and/or reimbursement of any nature or

amount for services rendered by the Designated Developer, if any, as the result of the execution of this Letter of Designation. The Designated Developer acknowledges and agrees that the Authority shall not provide capital funds for this redevelopment.

Kindly signify your acceptance of the terms of this Letter of Designation by signing in the space indicated below and returning with seven (7) days. Please contact Joseph Bamberg, Director, Real Estate Development, at 617-988-4318 if you have any questions.

Sincerely,

William E. McGonagle  
Administrator

ACCEPTED AND AGREED:

\_\_\_\_\_

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

Date: \_\_\_\_\_

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APPENDIX C-1

MINORITY AND WOMEN'S PARTICIPATION  
AND M/WBE UTILIZATION REQUIREMENTS

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SECTION 00800

THE BOSTON HOUSING AUTHORITY MINORITY AND WOMEN  
PARTICIPATION GOALS

For

MARY ELLEN MCCORMACK REDEVELOPMENT

1.01 GENERAL

A. This section summarizes goals for the project (the "Project") for the utilization of minority and women workers and minority business enterprises ("MBEs") and women's business enterprises ("WBEs") under the Contract.

B. Other duties and requirements of law which may not be specified in this section apply and are inherently a part of the Contract.

1.02 MINORITY AND WOMAN WORKER AND MBE AND WBE GOALS.

The Boston Housing Authority's Minority and Women's Participation Provision ("MWPP") is appended to this section and is numbered 00800A through 00800C. Together with this section 00800 the MWPP sets out certain affirmative action goals for the Contract. The Contractor shall take affirmative action to meet the minority employment and minority and women's business enterprise utilization goals for the Project set out herein.

A. Utilization of Minority Workers. The Project goal for the employment of minority employees is *FORTY PER CENT (40%)*. To meet this goal the Contractor must ensure that forty percent (40%) of employee person hours will be performed by minority employees.

B. Utilization of Women Workers. The Project goal for the employment of women employees is *TWELVE PER CENT (12%)*. To meet this goal the Contractor must ensure that ten percent (12%) of employee person hours will be performed by women employees.

C. Utilization of MBEs.

The Project goal for the utilization of MBEs is *TWENTY-TWO AND ONE-HALF PER CENT (22.5%)* of the Contract price. To meet this goal, the Contractor must ensure that twenty-two and one-half percent of the Contract price is expended to procure construction work and goods and/or services for the Project from MBEs.



D. Utilization of WBEs.

The Project goal for the utilization of WBEs is *NINE PER CENT (9 %)* of the Contract price. To meet this goal, the Contractor must ensure that nine percent of the Contract price is expended to procure construction work and goods and/or services for the Project from WBEs.

E. Required Certification. Only MBEs and WBEs certified by the State Office of Minority and Women's Business Assistance ("SOMWBA"), or its successor office, as such will be deemed MBEs and WBEs for the purpose of demonstrating compliance with the MWPP. Notwithstanding the foregoing, if a SOMWBA-certified MBE or WBE is not eligible under the MWPP, such MBE or WBE will be disqualified from participation.

1.03 REQUIRED SUBMITTALS.

The Contractor shall, in accordance with Section 3 of the MWPP, complete and submit to the Authority the Required Submittals within five (5) business days of bid opening. The Required Submittals are contained in the Boston Housing Authority Minority and Women Participation Provision Forms ("MWPP Forms") which is appended to this Section at Appendix 00800B.

1.04 EXTENSION OF TIME FOR SUBMITTAL.

The Contractor may, in accordance with Section 4 of the MWPP, request an extension of time for making the Required Submittals.

1.05 WAIVER OF MWPP UTILIZATION GOALS

The Contractor may, in accordance with Sections 7 and 9 of the MWPP, request a waiver of the MWPP goals set out in this section. *Waiver requests should be directed to the Director of Civil Rights at the BHA, 9th Floor, 52 Chauncy Street, Boston, MA 02111. Waiver requests may be mailed, faxed, or hand-delivered.*

1.06 INCREASE IN CONTRACT PRICE.

If there is an increase in the Contract price attributable to the selection of one or more alternates and/or to the use of unit prices, the Contractor shall, in accordance with Section 12 of the MWPP, conform the Required Submittals to reflect such increase. If there is an increase in the Contract price attributable to change orders or other adjustments, the Contractor may, in accordance with such Section 12, be required to revise its Required Submittals to reflect such increase.

1.07 EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION REQUIREMENTS.

The Contractor agrees to comply with all applicable Federal, State or other governmental rules, regulations and requirements relating to equal opportunity and affirmative action in construction projects (see Specification Appendix Section 00800C).

END OF SECTION

## APPENDIX 00800A

### THE BHA MINORITY AND WOMEN'S PARTICIPATION PROVISION

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## APPENDIX 00800A

### BOSTON HOUSING AUTHORITY MINORITY AND WOMEN PARTICIPATION PROVISION

#### 1. Definitions.

For the purposes of this Provision, the following terms have the following meanings:

- 1.1 Authority means the Boston Housing Authority.
- 1.2 Bidder means any individual, partnership, joint venture, corporation, or other entity which submits a general bid to the Authority for performance of construction work;
- 1.3 Contract means the contract executed or to be executed between a General Contractor and the Authority for performance of construction work, of which this Provision is a part;
- 1.4 Contractor means the individual, partnership, joint venture, corporation, or other entity which has executed the Contract with the Authority;
- 1.5 Minority means a person certified as such by the Massachusetts State Office of Minority and Women Business Assistance ("SOMWBA") pursuant to 425 CMR 2.00.
- 1.6 Minority Business Enterprise ("MBE") means a business enterprise certified as an MBE by SOMWBA pursuant to 425 CMR 2.00.
- 1.7 Perform means the doing of work by a construction contractor with its own organization.
- 1.8 Services means construction-related services supplied to the Contractor in connection with its performance of this Contract, including rental of equipment, trucking, security, and other similar services, but not including insurance, bonding, or other financial services.
- 1.9 SOMWBA means the Massachusetts State Office of Minority and Women Business Assistance, a division of the Office of Minority and Women Business Development, within the Department of Economic Development, which certifies minority, woman and minority/woman business enterprises, non-profit organizations and joint ventures pursuant to 425 CMR 2.00.
- 1.10 Subcontractor means any individual, partnership, joint venture, corporation, or other entity under contract with the Contractor (or any of its Subcontractors) to perform construction work under this Contract.
- 1.11 Supply means the provision of any goods or services by a vendor to the Contractor. An MBE or a Women's Business Enterprise ("WBE") that merely acts as an agent or a passive conduit in connection with the provision of goods or materials, or an MBE or a WBE that does not assume any financial risk

or control over goods and materials provided shall not be considered a vendor or supplier under this definition.

1.12 Women's Business Enterprise. ("WBE") means a business enterprise certified as a WBE by SOMWBA pursuant to 425 CMR 2.00.

2. Utilization of MBEs and WBEs. General bidders shall take affirmative action to meet the MBE and WBE utilization goals for construction work and/or for the supply of goods and/or services set out in the Section 00800 of the Specifications.

3. Required Submittals. Within five (5) business days of bid opening the apparent low general bidder shall complete and submit to the Authority signed copies of the following documents (collectively, the "Required Submittals"):

3.1 Attachment MWPP1, entitled "Contractor's Certification" ("Attachment MWPP1"); and

3.2 Attachment MWPP2, entitled "MBE/WBE Utilization Form" ("Attachment MWPP2"); and

3.3 An Attachment MWPP3, entitled "Letter of Intent", for each MBE and WBE listed in the general bidder's Attachment MPP2 as providing materials and/or construction services for the project.

In addition, the Authority may request any other general bidder to make the Required Submittals and such general bidder shall do so within five (5) business days of receipt of the Authority's request. The Authority shall make any such request in writing.

4. Extension of Time for Submittal. The apparent low general bidder may request an extension of time for making the Required Submittals, provided that:

4.1 The request is made in writing; and

4.2 Is made before the initial 5-day period for making the Required Submittals has expired; and

4.3 Sets out with specificity the reasons for the request.

The Authority will respond within two (2) business days of its receipt of a request for an extension of time. If the Authority does not respond to the request for an extension of time in a timely manner, the general bidder will be deemed to have been granted an extension of five (5) business days.

5. Penalty for Failure to Make Required Submittals. Failure to submit the Required Submittals in a timely manner may cause the Authority to reject the general bidder's bid.

6. Review of Required Submittals. The Authority will review the Required Submittals for compliance with the Authority's Minority and Women's Participation Provision ("MWPP"). Only MBEs and WBEs certified by SOMWBA as such will be deemed MBEs or WBEs for the purpose of demonstrating

compliance with the MWPP. Notwithstanding the foregoing, if a SOMWBA-certified MBE or WBE is not eligible under the MWPP, such MBE or WBE will be disqualified from participation by the Authority.

If after reviewing the Required Submittals the Authority determines that a general bidder has not met the affirmative action obligations established for the job in accordance with MWPP requirements, the Authority may in the exercise of its discretion afford that bidder an opportunity to amend its Required Submittals by the addition, deletion and/or substitution of MBEs and/or WBEs.

If the Authority has permitted a general bidder to amend its Required Submittals by the addition, deletion and/or substitution of MBEs and/or WBEs, that bidder shall promptly submit to the Authority its amended Attachment MWPP2, together with an Attachment MWPP3 for each new MBE and/or WBE.

7. Waiver of MBE/WBE Requirements. If, despite its best efforts, the apparent low general bidder is unable to meet the MBE/WBE goals established for the job, it may request a waiver, either in full or in part, of the MBE/WBE goals, provided that:

- 7.1 The request is made in writing; and
- 7.2 Is made before the initial 5-day period for making the Required Submittals has expired; and
- 7.3 Is submitted with such of the Required Submittals as may be made; and
- 7.4 Sets out with specificity the reasons for the request.

Upon receiving a request for a waiver of the MBE/WBE goals established for the job, the Authority will meet with the general bidder making the request in order to determine whether there is reasonable cause to waive the MBE/WBE goals for the job, either in full or in part. If in the exercise of its discretion the Authority determines that there is reasonable cause to grant the request for a waiver, it will notify the general bidder in writing of its decision and its reasons therefor.

In no event will the Authority's failure to act on a request for a waiver of the MBE/WBE goals for a job be deemed a grant of such a waiver.

8. Utilization of Minority and Women Workers. The Contractor and each of its Subcontractors will take affirmative action to assure that the percentage set out in Section 00800 of the Specifications of all person hours contributed in all job categories of construction work will be contributed by minority and women employees.

9. Waiver of Minority and Women Workforce Requirement. If, despite its best efforts, the Contractor or any of its Subcontractors is unable to comply with the Minority and women workers goals established for the job the Contractor may request a waiver, either in full or in part, of such goals, provided that:

- 9.1 The request is made in writing; and
- 9.2 Is made in a timely manner; and
- 9.3 Sets out with specificity the reasons for the request.

Upon receiving a request for a waiver of the Minority and women workforce goals established for the job, the Authority will meet with the Contractor in order to determine whether there is reasonable cause to waive such goals for the job, either in full or in part. If in the exercise of its discretion the Authority determines that there is reasonable cause to grant the request for a waiver, it will notify the Contractor in writing of its decision and its reasons therefor.

In no event will the Authority's failure to act on a request for a waiver of the Minority and women workforce goals for a job be deemed a grant of such a waiver.

10. Joint Venture Certification. Upon the Authority's certification that a venture between an MBE and a non-minority-owned business, or between a WBE and a non-women-owned business, is as to form and substance, a legitimate joint venture, such a joint venture may be utilized, as provided herein, toward fulfillment of the goals established by the MWPP for the job. If the Contractor or a Subcontractor is certified by the Authority as a legitimate joint venture, the creditable dollar amount of the work, goods or services performed or supplied by the MBE or WBE partner of the joint venture will be determined by the Authority in its sole discretion. In taking its determination as to the dollar amount to credit toward the MWPP goals, the Authority will consider, among other things, the amount of the initial capital contribution of the MBE or WBE partner to the joint venture and the amount of joint venture proceeds to be distributed and actually distributed to said MBE/WBE partner of the joint venture. The Contractor and any proposed parties to a joint venture shall provide to the Authority upon request such information or permit access by designees of the Authority, with or without prior notice, to any books, records, accounts, contracts or other sources of information necessary both to an initial determination or certification and to ongoing and final reviews of the business of the joint venture, in order to determine compliance with this Section 10.

11. Compliance Monitoring after Contract Award.

11.1 Prior to the execution of any Subcontract, whether prior to or after commencement of work under the Contract, the Contractor shall notify the Authority of the name, address, telephone number and MBE/WBE status of the Subcontractor with which it intends to contract for work and/or materials and/or supplies, the nature of the work and/or materials and/or supplies for which it intends to contract, the projected dates for commencement and completion of such work and/or provision of materials and/or supplies and a completed and signed Attachment MWPP1A, entitled "Subcontractor's Certification" ("Attachment MWPP1A") for such Subcontractor. The Contractor shall not enter into any such Subcontract without the express written consent of the Authority.



11.2 At the pre-construction meeting or one (1) week prior to commencement of work under the Contract and quarterly thereafter the General Contractor shall complete and submit to the Authority Attachment MWPP4, entitled "Quarterly Projected Work Force Table" ("Attachment MWPP4") showing for each week in the next following quarter its projected work force by trade. Attachment MWPP4 submissions shall be made no later than one (1) week in advance of the commencement of each quarter and whenever workforce projections are updated by the General Contractor.

11.3 At the end of each week following commencement of work under the Contract and continuing through to the completion of the work the General Contractor and each of its Subcontractors shall complete and submit to the Authority Attachment MWPP5, entitled "Weekly Utilization Report" ("Attachment MWPP5") showing for the preceding week the hours worked in each trade by each employee and identifying the minority status and sex of each such employee.

11.4 The Contractor and subcontractors shall submit a completed and signed Attachment MWPP 6 entitled "Monthly Employment Utilization Reports" ("Attachment MWPP6") by the fifth day of each month during the term of the Contract.

11.5 The Contractor shall submit with each application for payment under the Contract a completed and signed Attachment MWPP7, entitled "MBE/WBE Utilization Progress Report" ("Attachment MWPP7").

12. Increase in Contract Price. If there is an increase in the Contract price attributable to the selection of one or more alternates and/or to the use of unit prices in awarding the Contract, the Contractor shall submit a revised Attachment MWPP2 to reflect the increased price and, where applicable, an Attachment MWPP3 for each new MBE and/or WBE, or for each MBE and/or WBE doing additional work and/or providing additional material and/or supplies to the Contractor for an increased price. If there is an increase in the Contract price after execution attributable to change orders or other adjustments, the Authority may require the Contractor to submit a revised Attachment MWPP2 and, where applicable, new or revised Attachment MWPP3s.

13. No Substitution for Designated MWPP Subcontractors. Except with the prior express written consent of the Authority the Contractor shall not substitute for any MBE or WBE named in its Attachment MWPP2 as performing construction work or providing materials and/or supplies its own workforce or capacity or the workforce or capacity of any other subcontractor. If the Contractor is unable, for reasons beyond its control, to complete the work of the Contract using the MBEs or WBEs named in its Attachment MWPP2, the Contractor may request that the Authority accept the addition, deletion and/or substitution of one or more MBEs or WBEs, or that the Authority waive the

Contractor's MBE/WBE commitment under the MWPP to the extent necessary to bring the Contractor into compliance, or that the Authority accept an alternative commitment consistent with MWPP goals, provided that:

- 13.1 The request is made in writing; and
- 13.2 Is made promptly after the issue arises; and
- 13.3 Sets out with specificity the reasons for the request.

Upon receiving such a request, the Authority may meet with the Contractor in order to determine whether there is reasonable cause to grant the request, either in full or in part, or it may make its determination based upon written submissions and/or telephone interviews. If in the exercise of its discretion the Authority determines that there is reasonable cause to grant the Contractor's request, it will notify the Contractor in writing of its decision and its reasons therefor.

In no event will the Authority's failure to act on such a request be deemed a grant of the request.

#### 14. Enforcement.

14.1 If at any time the Authority determines that the Contractor is not in compliance with its obligations and commitments under the MWPP, it shall notify the Contractor in writing of such finding and of any sanctions it intends to apply. Such written notice shall give the Contractor an opportunity to meet with representatives of the Authority to present information demonstrating that it is in compliance, or in mitigation of its failure to comply and shall appoint a time and place for such meeting, subject to the Contractor's availability. The Authority may require the attendance of any Subcontractor at any such meeting.

14.2 Following any meeting held with a Contractor pursuant to Section 14.1 the Authority shall make a finding as to whether the Contractor is in compliance with its obligations and commitments under the MWPP and shall notify such Contractor in writing of such finding, the information upon which such finding was based and the sanctions, if any, it intends to apply. Such finding shall be final and without recourse, unless it is made in bad faith and without reasonable cause.

15. Penalties for Noncompliance. If, during the term of the Contract the Authority determines that the Contractor is not in compliance with its obligations and commitments under the MWPP, the Authority may impose on the Contractor, or require the Contractor to impose on any Subcontractor, any one or more of the following penalties:

15.1 The recovery from the Contractor of one percent (1%) of the Contract price or \$1,000.00, whichever is lesser, in the nature of liquidated damages for each week that the Contractor fails or refuses or has failed or refused to comply; or if a Subcontractor is in noncompliance, the recovery



from the Contractor, to be assessed by the Contractor as a back charge against the Subcontractor, one percent (1%) of the subcontract price, or \$1,000.00, whichever is lesser, in the nature of liquidated damages for each week that the Subcontractor fails or refuses or has failed or refused to comply;

15.2 The suspension of any payment or part thereof due under the Contract, including, where applicable, payment of amounts that should have been paid to an MBE or WBE in accordance with the Contractor's commitment, until such time as the Contractor, or any Subcontractor, where applicable, is able to demonstrate its compliance with the terms of the MWPP;

15.3 Requiring the Contractor to subcontract with an MBE or WBE for any contract or specialty item, or to purchase any goods or services from an MBE or WBE in accordance with the MBE/WBE utilization goals for the Contract and/or the Contractor's commitment under the Contract to utilize MBEs and WBEs for the work of the Contract;

15.4 The termination or cancellation of the Contract, in whole or in part, unless the Contractor or any Subcontractor, where applicable, is able to demonstrate within a reasonable specified time its compliance with its obligations and commitments under the MWPP;

15.5 The retention in connection with final acceptance and final payment of up to five percent (5%) of the Contract price (as adjusted by change orders or other amendments), where the Contractor and/or any Subcontractor has refused to demonstrate compliance with the Contractor's commitment under the Contract to utilize MBEs and WBEs in accordance with the MWPP;

15.6 Denial to the Contractor of the right to participate in any future contracts awarded by the Authority for a period of up to three (3) years.

16. Access to Records and Documents. The Contractor and its Subcontractors shall provide to the Authority upon the Authority's request access during regular business hours to any records, documents and other information prepared and/or kept by the Contractor and/or its Subcontractors in the regular course of business relevant to the Contractor's and/or its Subcontractors' compliance with the Authority's MWPP and shall promptly provide to the Authority upon its request copies of any and all such records, documents and other information.

17. Equal Opportunity and Affirmative Action Requirements. In addition to satisfying the specific requirements of this MWPP, the Contractor agrees to comply with all other applicable Federal, State or other governmental rules, regulations and requirements relating to equal opportunity and affirmative action in construction projects (see Appendix Section 00800C).

INFORMATIONAL COPY

**BHA MINORITY AND WOMEN PARTICIPATION PROVISION FORMS**

*Attachments 1A, 3, 4, 5, 6, 7 shall be submitted to the Contract Compliance Officer*

**Table of Contents:**

<b>Attachment MWPP1</b>	Contractor's Certification	(To be submitted by apparent low general bidder within five (5) business days of bid opening.)
<b>Attachment MWPP1A</b>	Subcontractor's Certification	(To be secured by general contractor from subcontractor and submitted prior to executing subcontract.)
<b>Attachment MWPP2</b>	Minority/Women Business Utilization Form	(To be submitted by apparent low general bidder within five (5) business days of bid opening.)
<b>Attachment MWPP3</b>	Letter of Intent	(To be submitted by apparent low general bidder within five (5) business days of bid opening.)
<b>Attachment MWPP4</b>	Quarterly Projected Workforce Table	(To be submitted by general contractor at pre-construction conference and prior to each quarter of work thereafter.)
<b>Attachment MWPP5</b>	Weekly Utilization Reports	(To be submitted by the general contractor and subcontractor five (5) days following the first week of work and weekly thereafter.)
<b>Attachment MWPP6</b>	Monthly Utilization Reports	(To be submitted by the general contractor and subcontractor by the fifth day of each month during the term of the contract.)
<b>Attachment MWPP7</b>	Minority Business Utilization Progress Report	(To be submitted by general contractor with or prior to each periodical request for payment.)

# ATTACHMENT MWPP1

Contractor's Certification

Bidder: \_\_\_\_\_

Name & Number of Project: \_\_\_\_\_

The purpose of Attachment MWPP1 is to demonstrate the intent of the bidder to comply with Section 00800 of the Specifications and the Minority Participation Provision ("MWPP").

A bidder may not be eligible for award of a contract unless such bidder has submitted the following certification, which is deemed a part of the resulting contract.

\_\_\_\_\_  
certifies that:

1. In the work under this contract, it intends to use the following construction trades:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. bidder will take affirmative action to meet the minority employment goals contained in Section 00800 of the Specifications and elsewhere in the contract documents for this Project; and
3. it will obtain from each of its subcontractors and submit to the Boston Housing Authority, prior to the award of any subcontract under this contract, the subcontractor certification (Attachment MWPP1A) required by the contract documents.

NOTE: SUBMISSION OF THIS COMPLETED FORM IS A MATTER OF BID RESPONSIVENESS. FAILURE TO COMPLETE AND SUBMIT THIS FORM IN ACCORDANCE WITH THE MINORITY PARTICIPATION PROVISION MAY CAUSE THE BID TO BE REJECTED.

Signed under the pains and penalties of perjury,

\_\_\_\_\_  
(Signature of authorized representative of contractor)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

# ATTACHMENT MWPP1A

Contractor's Certification

Bidder: \_\_\_\_\_

Name & Number of Project: \_\_\_\_\_

The purpose of Attachment MWPP1A is to demonstrate the intent of the subcontractor to comply with Section 00800 of the Specifications and the Minority And Women Participation Provision.

Prior to the execution of any subcontract, regardless of tier, the prospective subcontractor must execute and submit to the General Contractor the following certification, which will be deemed a part of the resulting subcontract.

\_\_\_\_\_ certifies that:

1. In the work under this contract, it intends to use the following construction trades:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. it will comply with the minority employment ratio contained in Section 00800 of the Specifications and elsewhere in the contract documents for this Project; and
3. it will obtain from each of its subcontractors, prior to the award of any subcontract under this subcontract, the subcontractor certification required by the General Contractor.

Signed under the pains and penalties of perjury;

\_\_\_\_\_  
(Signature of authorized representative of contractor)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

## ATTACHMENT MWPP2

Boston Housing Authority Minority and Women Business Utilization Form

The purpose of Attachment MWPP2 is to demonstrate the means by which the bidder will comply with Section 00800 of the Specifications and the Minority And Women Participation Provision ("MWPP").

Name and Number of Project: \_\_\_\_\_  
Total Dollar Amount of Base Bid: \_\_\_\_\_  
Name of General Bidder: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone(s): \_\_\_\_\_

The bidder certifies that it will meet the Minority and Women Business Enterprise (M/WBE) goals contained in Section 00800 of the Specifications and the MWPP: 1) because it is an MBE and/or WBE as defined in the MWPP and/or 2) by contracting with the MBEs and WBEs listed below to provide the work, goods, or services indicated below at the prices indicated below.

**NOTE: ONLY WORK ACTUALLY PERFORMED BY A GENERAL CONTRACTOR WHICH IS AN MBE OR A WBE MAY BE CREDITED TOWARDS THE CONTRACTOR'S MWPP GOALS. THE CONTRACTOR'S STATUS AS AN MBE OR WBE MAY NOT BY ITSELF BE SUFFICIENT TO MEET MWPP GOALS.**

MBEs that will supply GOODS or NON-CONSTRUCTION SERVICES

(Name, Address, Phone)

Type of GOODS or NON-CONSTRUCTION SERVICES

Price

Total of MBE GOODS or NON-CONSTRUCTION SERVICES

\$ \_\_\_\_\_

MBEs that will perform CONSTRUCTION WORK (Name, Address, Phone)

Type of CONSTRUCTION WORK

Price

\* Total of MBE CONSTRUCTION WORK

\$ \_\_\_\_\_

\*\* Grand Total of MBE GOODS, NON-CONSTRUCTION SERVICES and CONSTRUCTION WORK

\$ \_\_\_\_\_

\* The total of construction work must be sufficient to meet the MBE subcontracting goals set forth in Section 00800 of the Specification and the MWPP.

\*\* The Grand Total must be sufficient to meet the overall MBE percentage goal set forth in Section 00800 of the Specification and the MWPP.

## ATTACHMENT MWPP2

*Boston Housing Authority Minority Business Utilization Form (continued)*

**WBEs that will supply GOODS or NON-CONSTRUCTION SERVICES**  
(Name, Address, Phone)

Type of GOODS or NON-  
CONSTRUCTION SERVICES

Price

Total of **WBE** GOODS or  
NON- CONSTRUCTION  
SERVICES

\$ \_\_\_\_\_

**WBEs that will perform CONSTRUCTION WORK** (Name,  
Address, Phone)

Type of CONSTRUCTION  
WORK

Price

\* Total of **WBE**  
CONSTRUCTION WORK

\$ \_\_\_\_\_

\*\* Grand Total of **WBE**  
GOODS, NON-  
CONSTRUCTION  
SERVICES and  
CONSTRUCTION WORK

\$ \_\_\_\_\_

- \* The total of construction work must be sufficient to meet the WBE subcontracting goals set forth in Section 00800 of the Specification and the MWPP.
- \*\* The Grand Total must be sufficient to meet the overall WBE percentage requirement set forth in Section 00800 of the Specification and the MWPP.

## **ATTACHMENT MWPP2**

*Boston Housing Authority Minority and Women Business Utilization Form (continued)*

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**NOTE:** SUBMISSION OF THIS COMPLETED FORM IS A MATTER OF BID RESPONSIVENESS. FAILURE TO COMPLETE AND SUBMIT THIS FORM IN ACCORDANCE WITH THE MINORITY AND WOMEN PARTICIPATION PROVISION MAY CAUSE THE BID TO BE REJECTED. FURTHERMORE, FAILURE TO INDICATE ABOVE DOLLAR AMOUNTS SUFFICIENT TO MEET BOTH PERCENTAGE GOALS OF SECTION 00800 OF THE SPECIFICATION MAY ALSO CAUSE THE BID TO BE REJECTED.

Signed under the pains and penalties of perjury,

\_\_\_\_\_  
(Signature of authorized representative of contractor)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Federal Identification Number)



## ATTACHMENT MWPP3

### Letter of Intent

Project Number:

Project Name:

Name of General Contractor:

Name of Minority-Owned  
Business Enterprise:

1. The above-named Minority and/or Women Owned Business Enterprise agrees to perform work or supply goods and/or services in connection with the above-named project and the above-named General Contractor agrees to utilize the above-named Minority and/or Women Owned Business Enterprise in connection with the above-named project.

If the General Contractor and the Minority and/or Women Owned Business Enterprise will participate in the project as a joint venture, please attach a copy of the joint venture agreement and a copy of any financial agreements between corporate and personal members of the joint venture.

2. The minority and/or women status of the above-named Minority and/or Women Owned Business Enterprise is confirmed by SOMWBA (State Office of Minority and Women Business Assistance) as:

- ☐ MBE
- ☐ WBE
- ☐ BOTH

## ATTACHMENT MWPP3

Letter of Intent (continued)

**Project Number:**

**Project Location:**

Itemized Description of work, goods, or to be provided:	Contractors Labor:	Contractors Materials:	Suppliers Unit Price:	Suppliers Quantity:	Amount for Item:

Total Price \$ \_\_\_\_\_

\_\_\_\_\_  
(Signature of Authorized Representative of Minority and/or Women Business Enterprise)

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Federal Identification Number)

\_\_\_\_\_  
(Signature of Authorized Representative of General Contractor)

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Federal Identification Number)

## ATTACHMENT MWPP4

*Quarterly Projected Work Force Table*

Name and Number of Project: \_\_\_\_\_  
Name of General Contractor: \_\_\_\_\_  
Contractor Filling out this Form: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone(s): \_\_\_\_\_  
Trades Utilized: \_\_\_\_\_  
Estimate Total Hours to Complete Work: \_\_\_\_\_  
Total Contract Dollar Value: \$ \_\_\_\_\_  
Quarter Begin: \_\_\_\_\_  
Quarter End: \_\_\_\_\_

**NOTE:** Please identify the hours per trade, per week, for each trade individually.

WEEK ENDING:	PROJECTED TOTAL HOURS BY ALL PERSONNEL:	PROJECTED TOTAL OF ALL MINORITY HOURS:	PROJECTED TOTAL OF ALL FEMALE HOURS:	TRADE:

*THIS FORM MUST BE FILLED OUT BY THE GENERAL CONTRACTOR AND ALL SUBCONTRACTORS AND PRESENTED AT THE PRE-CONSTRUCTION CONFERENCE.*

## Weekly Utilization Report

Name of Contractor ( ) or Subcontractor ( ) Codes: 1. Caucasian, 2. Black, 3. Hispanic, 4. Asian, 5. Other

[illegible]

**BHA 149 MWPP 1/96**

## Weekly Utilization Report (Continued)

**b. WHERE FRINGE BENEFITS ARE PAID IN CASH**

☐ Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

### c. EXCEPTION

Remarks

4. That:

☐ In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe

**MWPP FORMS**  
**00800B-11 of 15**

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 10 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

## Weekly Utilization Report (Continued)

LOCATION:

PREPARED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

# INSTRUCTIONS FOR FILING MONTHLY EMPLOYMENT UTILIZATION REPORT (CC-257)

The Monthly Utilization Report is to be completed by each subject contractor (both prime and sub) and signed by a responsible official of the company. The reports are to be filed by the 10th day of each month during the term of the contract, and they shall include the total work-hours for each employee classification in each trade in the covered area for the monthly reporting period. All reports shall be submitted to the OFCCP office in your area. (Additional copies of this form may be obtained from the U.S. Department of Labor, Employment Standards Administration, OFCCP's office for your area.)

THE PRIME CONTRACTOR SUBMITS A REPORT FOR ITS TOTAL CONSTRUCTION WORK FORCE TO OFCCP. EACH SUBCONTRACTOR SEPARATELY SUBMITS A REPORT FOR ITS TOTAL CONSTRUCTION WORK FORCE TO OFCCP.

<b>Company Reporting</b>	Any company which has a construction contract with the U.S. Government or a contract funded in whole or in part with Federal funds. Includes subcontractors on such contracts.
<b>Minority</b>	Includes Blacks, Hispanics, American Indians, Alaskan Natives, and Asian and Pacific Islanders—both men and women.
<b>1. Name of MA or EA</b> The MA may be a Metropolitan Statistical Area (MSA) or a Primary MSA (PMSA).	The name of the Metropolitan Area or Economic Area for which this report reflects hours of work. If necessary contact local OFCCP office for correct name.
<b>2. Current Goals (Minority &amp; Female)</b>	See contract Notification, or contact local OFCCP office.
<b>3. Reporting Period</b>	Monthly, or as directed by OFCCP, beginning with the effective date of the contract.
<b>4. Name and Location of Company Reporting</b>	This is the company whose work hours are being reported on this form.
<b>5. Construction Trade</b>	Only those construction crafts which contractor employs in the MA or EA including laborers.
<b>6a. - 6e. Work-Hours of Employment</b>	6a. The total number of male HOURS and the total number of female HOURS worked by employees in each classification.  6b.-e. The total number of male HOURS and the total number of female HOURS worked by each specified group of minority employees in each classification.
<b>M = Male</b> <b>F = Female</b>	
<b>Classification</b>	The level of accomplishment or status of the worker in the trade (Journey Worker, Apprentice, Trainee). Combine all new hire hours.
<b>7. Minority Percentage of Total Hours</b>	The percentage of total minority work-hours of all work-hours (the sum of columns 6b, 6c, 6d, and 6e divided by column 6a; just one figure for each construction trade).
<b>8. Female Percentage of Total Hours</b>	For each trade the number reported in 6a. F divided by the sum of the numbers reported in 6a. M and F.
<b>9. Total Number of Employees</b>	Total NUMBER of male and total NUMBER of female employees working in each classification of each trade in the contractor's aggregate work force during reporting period.
<b>10. Total Number of Minority Employees</b>	Total NUMBER of male minority employees and total NUMBER of female minority employees working in each classification in each trade in the contractor's aggregate work force during reporting period.

## Public Burden Statement

We estimate that it will take an average of 60 minutes per response to complete this collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Office of IRM Policy, (1215-0163) U.S. Department of Labor, Room N1301, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

DO NOT SEND THE COMPLETED SURVEY TO THE OFFICE SHOWN ABOVE.

FORMS

00800B-1.3 of 1.5

ATTACHMENT MWPP6	U.S. Department of Labor Employment Standards Administration Office of Federal Contract Compliance Programs
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**U.S. Department of Labor**  
**Employment Standards Administration**  
**Office of Federal Contract Compliance Programs**

<p><b>INSTRUCTIONS ON REVERSE SIDE</b></p>	<p><b>I. Name of MA or EA</b></p>	<p>OMB No. 1215-0163 Expires: 12-31-97</p>
--	-----------------------------------	--

INSTRUCTIONS ON REVERSE SIDE	1. Name of MA or EA
---------------------------------	---------------------

OMB No. 1215-0163  
Expires: 12-31-97

List Worksite Address/Location

4. Name and Location of Company Reporting

### 3 Reporting Period

2. Control Costs

FEDERALS	IS	
TOTAL FEDERAL & NON-FEDERAL CONSTRUCTION WORK HOURS	IS	

**CONSTRUCTION  
TRADE  
(Including  
Laborers)**

### Classifications

6a.	Total All
-----	-----------

6b. Black

၆၆. မြန်မာနိုင်ငံ

6d. Asian or Pacific

6c. American Indian  
or Alaskan Native

7.	Minority

Female

Accepted	Number of	Total	of
----------	-----------	-------	----

al Number  
Minority

The above information represents all the hours worked by this company's construction employees at government and non-government construction worksites in the MA or SE A jurisdiction above for this reporting period.

**NOTICE: ONE REPORT PER MA/EA**  
If work is performed in more than one MA/EA, a separate report is submitted for each.

**Photo-copy and computer generated reports are acceptable.**

**11. Company Official's Signature and Title**

**12. Telephone Number  
(Include area code)**

**13. Date Signed**

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## ATTACHMENT MWPP7

### Progress Report

Project Number: \_\_\_\_\_  
Project Location: \_\_\_\_\_  
Date: \_\_\_\_\_  
Periodical Payment No.: \_\_\_\_\_

- (a) General Contractor: \_\_\_\_\_  
(b) Minority and/or Women Business Enterprise: \_\_\_\_\_

One copy of this report is to be submitted for each Minority and/or Women Business Enterprise at the time of submitting a request for payment. Copies of the report must be sent to the Minority Business Enterprise named above and the Contract Compliance Department.

1. The total price to be paid to the above-named Minority ☐ and/or Women ☐ Business Enterprise:  
\$ \_\_\_\_\_
2. The amount remitted to the Minority and/or Women Business Enterprise as of the above date for work performed under this project:  
\$ \_\_\_\_\_
3. Balance due the Minority and/or Women Business Enterprises as of the above date for work performed under the above-named project:  
\$ \_\_\_\_\_
4. Comments or explanation of amounts indicated under items 1 and 2 above:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. We hereby certify that the information supplied herein (including pages attached) is correct and complete.

General Contractor:

Minority Business Enterprise

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

APPENDIX 00800C

**BHA MINORITY PARTICIPATION PROVISION:**

**EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION REQUIREMENTS**

Federally-Assisted Contracts over \$10,000 only

Page C-2 to C-3	Action to Ensure Equal Employment Opportunity (Executive Order 11246)	Notice of Requirement for Affirmative
Page C-4 to C-5		Equal Opportunity Clause
Page C-6 to C-11		Standard Federal Equal Employment Opportunity Construction Contract Specifications
Page C-12 to C-13	Federal Bid Conditions	Instructions to Contractors Subject to

**NOTICE OF REQUIREMENT  
FOR AFFIRMATIVE ACTION  
TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY**

(Executive Order 11246)

1. The CONTRACTOR'S attention is called to the "Equal Opportunity Clause" and "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth in this part.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the CONTRACTOR'S aggregate workforce in each trade on all construction work in the covered area, are as follows:

GOALS FOR FEMALE PARTICIPATION IN EACH TRADE

UNTIL FURTHER NOTICE, the following goals and timetables for female minority utilization shall be included in all Federal or Federally-assisted construction contracts and subcontracts in excess of ten thousand (\$10,000) dollars. The goals are applicable to the Contractor's aggregate on-site construction work on a Federal or Federally-assisted construction contract or subcontract.

The goal for female participation is 6.9%.

GOALS FOR MINORITY PARTICIPATION IN EACH TRADE  
(Boston, Massachusetts Area)

UNTIL FURTHER NOTICE, the following goals and timetables for minority utilization shall be included in all Federal or Federally-assisted construction contracts and subcontracts in excess of ten-thousand (\$10,000) dollars. The goals are applicable to the contractor's aggregate on-site construction work force whether or not the part of that workforce is performing work on a Federal or Federally-assisted construction contract or subcontract.

GOALS AND TIMETABLES (EFFECTIVE UNTIL FURTHER NOTICE)

The goal for minority participation is 4.0%.

These goals are applicable to all the CONTRACTOR'S construction work (whether or not it is Federal or Federally-assisted) performed in the covered area. The covered area is Boston, MA.

The Contractor's Compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific

affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3 (a) and its efforts to meet the goals established for the geographical area where the contract is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract in each trade, and the CONTRACTOR shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR part 60-4. Compliance with the goals will be measured against the total work hours performed.

- 3 The CONTRACTOR shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within ten (10) working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the prime contract. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
4. As used in this Notice, and in the contract, the covered area is Arlington, Boston, Belmont, Brookline, Burlington, Cambridge, Canton, Reading, Revere, Somerville, Stoneham, Wakefield, Westwood, Winthrop, Winchester, Woburn, and the Islands of Boston Harbor, Massachusetts.

## EQUAL OPPORTUNITY CLAUSE

During the performance of the contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract for understanding, a notice to be provided advising the said labor union of workers' representatives of the contractors' commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and relevant orders of the Secretary of Labor.
6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any or the said rules, regulations, or orders, the contractor may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally-assisted construction 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.
7. The contractor will include the portion of the sentence immediately preceding

paragraph (1) and the provisions of paragraphs (1) through (7) 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 subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided however, that in the event a subcontractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

INFORMATIONAL COPY

**STANDARD FEDERAL EQUAL EMPLOYMENT  
OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS  
(EXECUTIVE ORDER 11246)**

1. As used in these specification:
  - a. Covered Area means the geographical area described in the contract agreement.
  - b. Director means Director, Office of Federal Contract Compliance Program, United States Department of Labor, or any person to whom the Director delegates authority.
  - c. Employer Identification Number means the Federal Social Security Number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - d. Minority includes:
    - I. Black ( all persons having origins in any of the Black African racial groups not of Hispanic origin).
    - II. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or other Spanish Culture or origin regardless of race).
    - III. Asian and Pacific Islander (all persons having origin in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands).
    - IV. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation of community identification).
2. Whenever the Contractor or any Subcontractor at any Tier subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the notice which contains the applicable goals for minority and female participation and which is set forth in this contract agreement.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan

area (including goals and timetables) shall be in accordance with that Plan for those trades which have union participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals or timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7(a) through (p) of these specifications. The goals set forth in this part are expressed as percentages of the total hours of employment and training of minority and female utilization. The Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246 or the regulations promulgated pursuant thereto.
6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its efforts to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

- a. Ensure and maintain a working environment free of harassment, intimidation and coercion at all sites and in all facilities at which the Contractor's employees are assigned to work. The Contractor where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the



Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

- b. Establish and maintain a current list of minority and female recruitment sources and to community organizations when the Contractor or its unions have employed opportunities available, and maintain a record of the organization's responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or women sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7(b) above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year, and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other

employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after-school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractors association and other business associations.
  - p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- 8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of the affirmative action obligations (7(b) through (p)). The efforts of a contractor association, joint contractor-union, contractor community, or other similar group of which the Contractor is a member or participant, may be asserted as fulfilling any one or more of its obligations under 7(a) through (p) of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and those in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables and can provide access to documentation which demonstrates the effectiveness of action taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's non-compliance.
- 9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
- 10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or national origin.
- 11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
- 12. The Contractor shall carry out such sanctions and penalties for violation of these Specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing

regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these Specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligation under these Specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these Specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, of these Specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof, as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security, race, sex, status (e.g. mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**INSTRUCTIONS TO CONTRACTORS SUBJECT  
TO FEDERAL BID CONDITIONS<sup>1</sup>**

Within ten (10) working days of the award of a subcontract in excess of \$10,000, the contractor must submit a "Notice of Award of Construction Subcontract" to:

Assistant Regional Administrator  
Office of Federal Contract Compliance Programs  
U.S. Department of Labor  
JFK Federal Building, Room 1612C  
Boston, MA 02203 (617) 223-5272

In addition, all contractors and subcontractors subject to the Federal EEO Bid Conditions are required to file the Standard Form 257. The instructions for filing this Monthly Employment Utilization Report are as follows:

- a. The report is to be completed by each subject contractor (both prime and subcontractors), signed by a responsible official of the company, and filed by the fifth day of each month during the term of the contract, beginning the effective date of the contract. This report includes the total work hours worked for each employee level in each designated trade for the entire reporting period. The contractor submits a report for its aggregate work force on all Federally-funded or assisted construction contracts and all non-Federal construction work within the particular Bid Condition area, and collects from subcontractors performing work on a Federally-assisted construction project their individual SF-257 reports of aggregate workforce in the Bid Condition area, and submits them with its own report to:

Assistant Regional Administrator  
Office of Federal Contract Compliance Programs  
U.S. Department of Labor  
JFK Federal Building, Room 1612C  
Boston, MA 02203

Subcontractors should not individually submit these reports directly to HUD.

- b. Attach to the Standard Form 257 a one time listing of all Federally-funded or

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<sup>1</sup>Forms referred to in these instructions are available from:

U.S. Department of Labor-Area Office  
Office of Contract Compliance  
507 J.W. McCormack Post Office and Court House Building  
Boston, MA 02109 (617) 223-1481

assisted contracts within the particular Bid Condition area by agency, contract and/or project number, location, dollar volume, percent completed, completion date, and a similar listing of all non-Federal work being performed in that area. Monthly reports thereafter should only include a listing of new contracts (both federal and non Federal) received and current contracts completed.

- c If there is no work in a craft in the contractor's aggregate workforce for the reporting month, indicate this lack of work by placing a zero (0) in the appropriate column.
- d Label the final report for a contractor or subcontractor FINAL REPORT- CONTRACT/SUBCONTRACT COMPLETED.
- e Enter your employer identification number (Federal Social Security number used on the Employers Quarterly Tax Return, U.S. Treasury Department Form 941) in item 1 of the Standard Form 257.
- f Minority is defined as including Blacks, Hispanics, Asians/Pacific Islanders and American Indians, Aleuts, Cape Verdeans, and Eskimos.
- g The procedure for assigning OFCCP identification numbers to each contract awarded has been cancelled, and the project names and OFCCP number are no longer required to be reported on the SF-257.

Construction contractors and subcontractors performing work subject to the requirements of Executive Order 11246 in non-plan areas are also required to file SF-257 forms on a monthly basis. The procedure for filing the form is identical to that outlined above except that the geographic area for reporting is the Standard Metropolitan Statistical Area (SMSA) (or county, where no SMSA exists) in which the Federally-assisted construction contract is being performed.

APPENDIX C-2

RESIDENT EMPLOYMENT PROVISION: CONSTRUCTION CONTRACTS

INFORMATIONAL COPY

Boston Housing Authority  
Section 3 Provision: Construction Contracts

APPENDIX 00810

BOSTON HOUSING AUTHORITY  
SECTION 3 PROVISION

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Boston Housing Authority  
**Section 3 Provision: Construction Contracts**

**SUMMARY**

**1.01 GENERAL**

A. This section summarizes the Boston Housing Authority Section 3 Provision ("S3P"). The S3P describes BHA's implementation of section 3 of the Housing and Urban Development Act of 1968 ("Section 3"). Section 3 is a federal law that requires contractors, to the greatest extent feasible, to hire and/or train residents of BHA's federally funded public housing developments and communities and adjacent neighborhoods ("Section 3 Residents") and to offer subcontracts to business concerns owned in whole or in part by Section 3 Residents ("Section 3 Business Concerns"). Section 3 and this S3P apply to all BHA contractors and all BHA contracts regardless of the contract dollar amount. The S3P will be incorporated into the contract to be awarded by the BHA (the "Contract" or the "Section 3 Contract") and contains both pre-bid award and post-bid award requirements.

B. In addition to this Summary section, bidders and contractors are required to review all sections of the S3P in order to be fully advised of all S3P procurement phase and contract phase requirements. Other duties and requirements of law which may not be specified in this section or the S3P apply and are inherently made part of the Contract.

**1.02 PREFERENCES FOR SECTION 3 RESIDENTS AND SECTION 3 BUSINESS CONCERNS**

A. Training and Employment Preference for Section 3 Residents.

1. The Contractor shall, to the greatest extent feasible, give preference to Section 3 Residents when hiring any full-time employee for permanent, temporary or seasonal employment ("New Hire") under the Contract. The Contractor will be deemed to be in compliance with the training and employment requirement of the S3P if a minimum of THIRTY PERCENT (30%) of all New Hires are Section 3 Residents.

2. The S3P establishes certain requirements for outreach to Section 3 Residents by the Contractor and for the documentation of such outreach efforts. Consult Part 2.2 of the S3P for these requirements.

3. The S3P establishes an order of priority for the Contractor for making any New Hire under the Contract. Consult Part 2.3 of the S3P for the order of priority in making offers of New Hires.

B. Contract Preference for Section 3 Business Concerns.

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1. The Contractor shall, to the greatest extent feasible, give preference to Section 3 Business Concerns when entering into any contract for the work of the Project. The Contractor will be deemed to be in compliance with the contract preference for Section 3 Business Concerns if it commits to award to Section 3 Business Concerns **at least TEN PERCENT (10%)** of the total dollar amount of the Contract. Consult Part 3.4 of the S3P for specifics.
2. The S3P establishes certain requirements for outreach to Section 3 Business Concerns by the Contractor and for the documentation of such outreach efforts. Consult Part 3.2 of the S3P for these requirements.
3. The S3P establishes an order of priority for the Contractor when entering into any contract for the work of the Project. Consult Part 3.3 of the S3P for the order of priority in entering into such contracts.

#### **1.03 PROCEDURES PRIOR TO CONTRACT AWARD AND EXECUTION**

1. The apparent low general bidder is required under the S3P to make certain submittals to the Authority prior to contract award. Consult Parts 4 and 5 of the S3P for these requirements for more details regarding these requirements.
2. A schedule of procedures prior to contract execution is indicated below:

<u>Day</u>	<u>Event</u>	<u>Submission of Form</u>
0	Bid Opening	Form 1 (Part 4.1.1)
10		Forms 2,3, and 4 (Part 4.1.3) Section 3 Compliance Plan (if applicable)
15	BHA Approval/Disapproval of Section 3 Compliance Plan	
30	Contract Award	Provide Current Employee Information

#### **1.04 SECTION 3 PROVISION FORMS**

The S3P forms are appended to Part 10 of the S3P. Bidders and contractors are required to submit the various S3P forms during the bidding submission phase, contract award phase and contract administration phase in the manner described in the S3P, time being of the essence.

#### **1.05 SECTION 3 CLAUSE.**

The Contractor is required to include information entitled the "Section 3 Clause" in all contracts and subcontracts related to the Contract. The Section 3 Clause is printed at Part 10 of the S3P.

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**1.06 MISCELLANEOUS**

No provision of this S3P shall be interpreted or construed to create or establish an employment, agency or contractual relationship of any type or nature between the BHA and any Section 3 Resident and/or any Section 3 Business Concern.

END OF S3P SUMMARY SECTION

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1. **Definitions.**

For the purposes of this Resident Employment Provision, the following terms have the following meanings:

1. Authority or BHA means the Boston Housing Authority.
2. BHA leased housing participant means an individual or family that has been admitted to and is currently assisted by a housing program administered by the BHA Leased Housing Department.
3. Contractor means any entity which contracts to perform work in connection with a Section 3 Covered Project.
4. Employment opportunities means, with respect to Section 3 covered housing assistance, all employment opportunities arising in connection with Section 3 covered projects including management and administrative jobs. Management and administrative jobs include architectural, engineering, or related professional services required to prepare plans, drawings, specifications, or work write-ups; and jobs directly related to administrative support of these activities, for example, construction manager, relocation specialist, payroll clerk, etc.
5. Federal Wage Rate Job Classification means the job classifications listed in the federal minimum wage rate schedule issued from time to time by the Secretary of the United States Department of Labor pursuant to the Davis Bacon Act.
6. HUD means the U.S. Department of Housing and Urban Development.
7. HUD YouthBuild programs mean programs that receive applicable federal assistance and provide disadvantaged youth with opportunities for employment, education, leadership development, and training in the construction or rehabilitation of housing for homeless individuals and members of low- and very low-income families.
8. Metropolitan area means the Boston metropolitan statistical area (MSA), as established by the Office of Management and Budget. The Boston MSA consists of seven counties: Norfolk, Plymouth, Suffolk, Middlesex, Essex, Rockingham (NH), and Strafford (NH).
9. New Hires means full-time employees hired for permanent, temporary or seasonal employment. An employee returning to the payroll after a period of unemployment is considered a new hire for Section 3 purposes.
10. Person means any natural person, business, partnership, corporation, joint venture, organization, entity or group of individuals.
11. Project Development means the public housing development or developments for which the Contractor is performing work under a Section 3 Covered Contract.
12. Provision or S3P means this Section 3 Provision.
13. Section 3 means section 3 of the Housing and Urban Development Act of 1968,

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as amended (12 U.S.C. 1701u).

14. Section 3 Business Concern means a business entity organized in accordance with applicable state law and licensed in the Commonwealth of Massachusetts to conduct the business for which it was formed; and

- .1 That is 51% or more owned by Section 3 Residents; or
- .2 Whose permanent, full-time employees include persons, at least 30 percent of whom are currently section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents; or
- .3 That provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded by it to business concerns that meet the qualifications set out in paragraphs .1 and .2 of this Part 1.14.

15. Section 3 Compliance Plan means the plan submitted to the Authority by a Contractor setting out how it intends to comply with the requirements of this Provision.

16. Section 3 Covered Activity means any activity which is funded by Section 3 - covered HUD assistance.

17. Section 3 Covered Contract means a contract or a subcontract (including a professional service contract) awarded by the Authority or by a Contractor for work on a Section 3 Covered Project and/or any Section 3 Covered Activity. Section 3 Covered Contracts do not include contracts for the purchase of supplies and materials, except where a contract for the purchase of materials includes installation.

18. Section 3 Covered Project means the construction, reconstruction, installation, repair, demolition, maintenance, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards) and/or the furnishing of services to or on the behalf of the Authority which shall include, but not be limited to, the furnishing of labor, time, and/or effort by a contractor.

19. Section 3 Joint Venture means an association of business concerns formed by a written joint venture agreement to engage in and carry out a specific business venture, where one of the business concerns qualifies as a Section 3 Business Concern and:

- .1 Is responsible for a clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and
- .2 Performs at least 25% of the work and is contractually entitled to compensation proportionate to its work.

A Section 3 Joint Venture shall meet all the requirements for submitting proposals, bidding on contracts, or entering into contracts generally applicable to all other Persons or business entities doing so.

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20. Section 3 Resident means an individual who is at least 18 years of age, who

.1 Maintains his or her full-time principal residence at any of the public housing developments owned by the Authority and who is listed on the lease as a resident

or

.2 Is a low-or very-low income resident of the Boston metropolitan area.

21. Subcontractor means any entity (other than an individual who is an employee of the Contractor) which has a contract with a Contractor to undertake a portion of the Contractor's obligation for the performance of the work.

**1A. Order of Precedence.**

In the event of a conflict between the definitions contained in this Part 1 and the definitions of terms contained in Section 3 and its regulations, the definitions contained in Section 3 and its regulations shall control:

**2. Training and Employment Preference for Section 3 Residents.**

2.1 The Contractor shall, to the greatest extent feasible, give preference to Section 3 Residents when making any New Hires in connection with a Section 3 Covered Contract.

2.2 Prior to making any New Hire in connection with a Section 3 Covered Contract, the Contractor shall use its best efforts to:

.1 Notify Section 3 Residents about training and employment opportunities arising out of any Section 3 Covered Contract;

.2 Encourage the application of Section 3 Residents for training and employment opportunities arising out of any Section 3 Covered Contract;

.3 Facilitate the employment of Section 3 Residents; and

.4 Document actions taken to comply with the requirements of this Part 2; the results of such actions and impediments encountered, if any.

2.3 In making any New Hire in connection with a Section 3 Covered Contract, the Contractor shall make such hires in the following order of priority:

.1 Section 3 Residents from the Project Development;

.2 Section 3 Residents from other Public Housing

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Developments owned and/or operated by the Authority and located in the Neighborhood of the Project Development;

.3 Section 3 Residents from other Public Housing Developments owned and/or operated by the Authority and located outside the Neighborhood of the Project Development;

.4 Participants in HUD Youthbuild programs being carried out in Boston: firstly, in the Neighborhood of the Project Development; and, secondly, outside the Neighborhood of the Project Development.

.5 Participants in BHA's leased housing programs in the Boston metropolitan area;

.6 Other low-income or very-low income residents of Boston metropolitan area.

2.4 The Contractor may demonstrate compliance with the training and employment requirements of this Provision by meeting the following minimum numerical goals:

.1 By committing to employ Section 3 Residents as **thirty percent (30%)** of the aggregate number of New Hires.

.2 Where applicable and to the greatest extent feasible, the Contractor shall make New Hires in Federal Wage Rate Job Classifications.

2.5 Any Contractor which has not met the minimum numerical goals for training and employment set forth in this Part 2 has the burden of demonstrating why it was not feasible to meet such goals.

2.6 A Section 3 Resident seeking preference in training and employment pursuant to this Part 2 shall, if requested to by the Contractor, certify or submit evidence that he or she is a Section 3 Resident as defined in this Provision. Notwithstanding the foregoing, any individual named as a Section 3 Resident on a list provided to the Contractor by the Authority shall be deemed to be a Section 3 Resident for the purposes of this Part 2.6 without being required to furnish additional proof of such status.

2.7 Nothing in this Part 2 shall be construed to require the employment of a Section 3 Resident who does not meet the minimum qualifications of the position to be filled; however, any such qualifications shall be reasonably related to the work to be performed by the person filling the position as determined by the Authority.

2.8 The Contractor is responsible for complying with the requirements of this Provision in its own operations and for assuring compliance in the operations of its Subcontractors.



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**3. Contract Preference for Section 3 Business Concerns.**

3.1 The Contractor shall, to the greatest extent feasible, give preference to Section 3 Business Concerns when entering into any Contract in connection with a Section 3 Covered Project.

3.2 Prior to entering into any Contract in connection with a Section 3 Covered Project, the Contractor shall use its best efforts to:

- .1 Notify Section 3 Business Concerns about contracting opportunities arising out of any Section 3 Covered Contract;
- .2 Encourage Section 3 Business Concerns to submit proposals or bids on any Section 3 Covered Contracts;
- .3 Facilitate the award of contracts to Section 3 Business Concerns; and
- .4 Document actions taken to comply with the requirements of this Part 3, the results of such actions and impediments encountered, if any.

3.3 In entering into any Contract in connection with a Section 3 Covered Project, the Contractor shall award any such contract in the following order of priority:

- .1 Section 3 Business Concerns 51% or more owned by Section 3 Residents of the Project Development or whose full-time permanent workforce includes 30% of those individuals as employees;
- .2 Section 3 Business Concerns 51% or more owned by Section 3 Residents of other Public Housing Developments owned and/or operated by the Authority whose full-time permanent workforce includes 30% of those individuals as employees;
- .3 HUD Youthbuild programs being carried out in Boston metropolitan area: firstly, in the Neighborhood of the Project Development; and secondly, outside the Neighborhood of the Project Development.
- .4 Business concerns that are 51% or more owned by Section 3 Residents, or whose permanent, full-time workforce includes no less than 30% Section 3 Residents, or that subcontract in excess of 25% of the total amount of subcontracts to business concerns identified in Parts 3.3.1 and 3.3.2.

3.4 The Contractor may demonstrate compliance with the contract requirements of this Provision by meeting the following minimum



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numerical goals:

.1 By committing to award to Section 3 Business Concerns at least **ten percent (10%)** of the total dollar amount of any Section 3 Covered Contract for building trades work for the maintenance, repair, modernization or development of public housing, or for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; or,

.2 By committing to award to Section 3 Business Concerns at least **three percent (3%)** of the total dollar amount of any other Section 3 Covered Contract.

3.5 Any Contractor which has not met the minimum numerical goals for contracting set forth in this Part 3 has the burden of demonstrating why it was not feasible to meet such goals.

3.6 A Section 3 Business Concern seeking preference in contracting pursuant to this Part 3 shall, if requested to by the Contractor, certify or submit evidence that it is a Section 3 Business Concern as defined in this Provision. Notwithstanding the foregoing, any business concern named as a Section 3 Business Concern on a list provided to the Contractor by the Authority shall be deemed to be a Section 3 Business Concern for the purposes of this Part 3.6 without being required to furnish additional proof of such status.

3.7 A Section 3 Business Concern seeking preference in contracting pursuant to this Part 3 shall, if requested by the Contractor awarding the Contract, submit evidence sufficient to demonstrate to the satisfaction of the Contractor that it is responsible and has the ability to perform successfully under the terms and conditions of such Contract.

3.8 The Contractor is responsible for complying with the requirements of this Provision in its own operations and for assuring compliance in the operations of its Subcontractors.

**4. Procedures Prior to Contract Execution.**

**4.1 Publicly Bid Section 3 Covered Contracts**

.1 General bidders shall submit a completed **Contractor's Certification of Intent to Comply with Section 3 (Form 1)** with their bids.

.2 If the Contractor's Certification of Intent to Comply with Section 3 (Form 1) is not submitted with the bid, the Authority may, but is not required to, reject the bid. If the Contractor's Certification is incomplete, the Authority may, but is not required to, permit the apparent low general bidder to submit and/or complete,

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correct, and/or modify such Form in order to meet bid requirements.

.3 Within ten (10) business days after general bids for a Section 3 Covered Contract are opened, the Contractor shall submit to the Authority:

- a.) **Contractor's Section 3 Hiring, Training, and Subcontracting Opportunities (Form 2) and Contractor/Subcontractor Section 3 Hiring and Training Opportunities (Form 3)**, listing New Hire opportunities projected under the Contract;
- b.) **Contractor/Subcontractor Section 3 Contracting Opportunities (Form 4)**, listing contracting opportunities projected for award under the Contract;
- c.) For contracts valued over \$100,000, a **Section 3 Compliance Plan** describing in detail how the Contractor intends to comply with this Provision, including a plan for soliciting Section 3 Residents and Section 3 Business Concerns for employment and contracting opportunities, together with sample solicitations and other information to be used in the implementation of such plan and designating a representative for overseeing the Contractor's responsibilities under this Provision.

4.2 If deemed advisable by the BHA, the Authority may assist the Contractor's outreach efforts by providing the Contractor with the following information (if such information is available) for its consideration:

.1 A list of Section 3 Residents available for work under this Provision and a summary of their qualifications and experience; and

.2 A list of Section 3 Business Concerns available for work under this Provision and a summary of their qualifications and experience.

4.3 The Authority shall, within five (5) business days after the delivery to the Authority of the Section 3 Compliance Plan:

.1 Approve the Section 3 Compliance Plan as submitted;  
or

.2 Approve the Section 3 Compliance Plan as modified to reflect changes arising out of correspondence between the Contractor and the Authority; or

.3 Notify the Contractor that the Section 3 Compliance Plan is not approved and require the Contractor to submit for the Authority's approval a revised Section 3 Compliance Plan.

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4.4 If the Contractor does not submit a Section 3 Compliance Plan, or if the Authority does not approve the Section 3 Compliance Plan, the Authority may, but is not required to, award the Contract to the next lowest responsible and eligible bidder.

.1 The next lowest responsible, eligible bidder shall be required to submit the forms required pursuant to Part 4.1 within five (5) business days of receipt of the Authority's request. Forms required to be submitted pursuant to Part 4.1.3 shall be submitted by the general bidder within ten (10) business days of receipt of the Authority's original request.

4.5 In addition, the Contractor shall submit to the Authority prior to execution of any Subcontract and for all filed sub-bidders a Contractor/Subcontractor Section 3 Hiring and Training Opportunities form (Form 3) and Contractor/Subcontractor Section 3 Contracting Opportunities form (Form 4) completed by such Subcontractor under such Subcontract.

4.6 On the date of contract award, the Contractor shall provide the Authority with a list of its current employees in a format satisfactory to the Authority. The Contractor shall provide such employee lists on an ongoing basis for any and all of its subcontractors as subcontracts are awarded.

4.7 Notwithstanding the foregoing, the Contractor shall demonstrate compliance with this Provision no later than the date the Contractor signs the Contract.

**5. Compliance Monitoring After Notice to Proceed.**

5.1 On or before the fifth business day of each month of the Contract term, the Contractor shall submit to the Authority a completed **Monthly Section 3 Report (Form 5)** for the preceding month, setting out for each week in such month the hours worked by each new hire employed, whether employed directly by the Contractor, or indirectly by one or more of its Subcontractors and amounts paid under the contract to Section 3 Business Concerns, whether such amounts are paid directly by the Contractor, or indirectly by one or more of its Subcontractors.

5.2 The Contractor shall promptly provide to the Authority, at its request, any such information or reports as the Authority may require and shall permit access to the Authority's employees and agents to the job site and to any books, records, accounts and/or other material deemed by the Authority to be necessary to monitor the Contractor's compliance with this Provision.

5.3 The Contractor or any of its Subcontractors may terminate the employment of a Section 3 Resident or the contract of a Section 3 Business Concern for good cause, provided that the Contractor or

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Subcontractor first notifies the Authority in writing of the proposed termination and the specific reasons therefor. The Authority may request that the Contractor or Subcontractor meet with the Authority to discuss the reasons for any such proposed termination. Nothing in this paragraph or in the S3P is intended to or shall be interpreted to create or establish an employment, agency or contractual relationship of any type or nature between the BHA and any Section 3 Resident and/or any Section 3 Business Concern.

5.4 If any Section 3 Resident employed by the Contractor or a Subcontractor pursuant to this Provision leaves or is terminated from such employment, or if any Section 3 Business Concern fails to perform under its contract or its contract is terminated, the Authority may require the Contractor and/or its Subcontractor to employ another Section 3 Resident or contract with another Section 3 Business Concern in order to remain in compliance with the requirements of this Provision.

**6. Enforcement.**

6.1 If at any time the Authority determines that the Contractor is not in compliance with this Provision, it shall notify the Contractor in writing of such finding and of any sanctions it intends to apply. Such written notice shall give the Contractor an opportunity to meet with representatives of the Authority to present information demonstrating that it is in compliance, or in mitigation of its failure to comply and shall appoint a time and place for such meeting, subject to the Contractor's availability. The Authority may require the attendance of any Subcontractor at any such meeting.

6.2 Following any meeting held with a Contractor pursuant to Section 6.1 the Authority shall make a finding as to whether the Contractor is in compliance with this Provision and shall notify such Contractor in writing of such finding, the information upon which such finding was based and the sanctions, if any, it intends to apply. Any such finding shall be final and without recourse, unless it is made in bad faith and without reasonable cause.

**7. Sanctions.**

7.1 If the Authority determines that the Contractor is not in compliance with this Provision, the Authority may impose on the Contractor, or require the Contractor to impose on any Subcontractor, any one or more of the following sanctions:

.1 The recovery from the Contractor of one-tenth of one percent (0.1%) of the Contract price or \$2,500, whichever is greater, in the nature of liquidated damages, for each week that the



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Contractor fails or refuses to comply; or the recovery from the Contractor, to be assessed by the Contractor as a back-charge against the Subcontractor, of one-tenth of one percent (0.1%) of the subcontract price, or \$1,000, whichever sum is greater, in the nature of liquidated damages for each week that the Subcontractor fails or refuses to comply.

.2 The suspension of any payment or part thereof due under the Contract, until such time as the Contractor is able to demonstrate its compliance with the terms of this Provision.

.3 The termination or cancellation of the Contract, in whole or in part, unless the Contractor is able to demonstrate within a specified time its compliance with the terms of this Provision.

.4 In connection with final acceptance and final payment, retention and forfeiture of no more than five percent (5%) of the Contract price (as adjusted by change orders or other amendments), where the Contractor has been unable to demonstrate compliance with the terms of this Provision.

.5 Denial to the Contractor of the right to participate in any future contracts awarded by the Authority for a period of up to three (3) years.

7.2 If, at any time after the imposition of one or more of the above sanctions, a Contractor is able to demonstrate to BHA's satisfaction that it is in compliance with this Provision, it may request the Authority to suspend the sanctions conditionally, pending a final determination as to whether the Contractor is in compliance. Upon final determination of the Authority, the Authority shall either lift the sanctions or re-impose them.

**8. Other Provisions.**

8.1 All Section 3 Covered Contracts shall include the clause set forth in Part 10, entitled "Section 3 Clause".

8.2 Certain Contractors subject to this Resident Employment Provision are also required to comply with Executive Order 11246, as amended by Executive Order 12036 and the Department of Labor regulations issued pursuant thereto (41 CFR chapter 60), which provide that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of Federal or Federally assisted construction contracts.

8.3 The Authority shall have access to all records, reports, and other documents or items maintained to demonstrate compliance with this REP.

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**9. Section 3 Clause.**

The Contractor shall require that the following provision entitled "the Section 3 Clause" be included in all Section 3 Covered Contracts related to or associated with the work to be performed under the Contract:

**SECTION 3 CLAUSE 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

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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) 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).

END OF SECTION 3 CLAUSE

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10. Section 3 Provision Submission Forms and Deadlines

FORM 1	Contractor's Certification of Intention to Comply with Section 3	Submit with bid
FORM 2	Contractor's Section 3 Hiring, Training, and Subcontracting Opportunities	Due within 10 business days of BHA notification of required forms
FORM 3	Contractor/Subcontractor Section 3 Hiring and Training Opportunities	"
FORM 4	Contractor/Subcontractor Section 3 Contracting Opportunities	"
	Section 3 Compliance Plan* (For contracts valued over \$100,000)	"
FORM 5	Monthly Section 3 Report	Submit within 5 business days of each month of contract term
HUD Form 60002	Section 3 Summary Report	Submit at end of calendar year (if applicable) and at completion of project

\* There is no BHA form for a Section 3 Compliance Plan but sample plans are available on request. The Compliance Plan details the prime contractor's specific efforts to implement the Section 3 requirements.



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FORM 1  
Contractor's Certification of Intent to Comply with Section 3

*This form is to be submitted by general bidders with their bid package. Failure to submit this form with your bid may result in the rejection of your bid.*

I hereby certify that:

1. I am the \_\_\_\_\_ [Insert Title] of \_\_\_\_\_  
\_\_\_\_\_ [Insert Name of Contractor] (the "Company");
2. I am duly authorized by the Company to submit a general bid on its behalf to the Boston Housing Authority for \_\_\_\_\_  
[Insert Project Name and Number] and to execute any and all documents required to be filed as a condition of such bid/proposal;
3. I have read and understood the Section 3 Provision, which applies Section 3 of the Housing and Urban Development Act of 1968, as amended, and the Section 3 regulations found at 24 CFR 135.
4. The Company will comply with the requirements of 24 CFR 135 and the Section 3 Provision. This includes ensuring that, to the greatest extent feasible, **at least thirty percent (30%) of new hires and trainees** will be Section 3 residents and **at least ten percent (10%) of the contract value** for construction contracts will be awarded to Section 3 business concerns (or three percent (3%) of the contract value for non-construction contracts).
5. The Company is responsible for the compliance of its subcontractors and will ensure that its subcontractors comply with the requirements set out in 24 CFR 135 and the Section 3 Provision.

Signed under the penalties of perjury.

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

Date: \_\_\_\_\_

By: \_\_\_\_\_  
[Signature]  
Duly Authorized

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FORM 2

**Contractor's Section 3 Hiring, Training, and Subcontracting Opportunities**

*This form is to be completed by the prime contractor only. Incomplete submissions will be returned. Failure to submit this completed form along with Forms 3 and 4, within ten (10) business days of BHA notification of required forms may result in the bid being awarded to the next lowest responsible and eligible bidder.*

BHA Project No. \_\_\_\_\_ Total value of contract: \_\_\_\_\_

HIRING		SUBCONTRACTING	
<input type="checkbox"/>	New Hires/Trainees Projected	<input type="checkbox"/>	Subcontracting Projected
<input type="checkbox"/>	No New Hires/Trainees Projected	<input type="checkbox"/>	No Subcontracting Projected

I hereby certify that (please initial):

- \_\_\_\_\_ A complete and accurate list of all positions projected under the Contract is provided on **FORM 3**, attached.
- \_\_\_\_\_ A complete and accurate list of all subcontracts projected for award under the Contract is provided on **FORM 4**, attached.
- \_\_\_\_\_ For contracts valued over \$100,000, a **Section 3 Compliance Plan** describing the Company's specific steps to implement the Section 3 goals is attached.
- \_\_\_\_\_ The Company will update these documents as necessary to assure that they represent the most current information available to the Company.
- \_\_\_\_\_ Any vacant positions filled after the contract award notification but before contract execution will not be filled to circumvent the Company's Section 3 obligations.
- \_\_\_\_\_ At the time of contract award, **a complete and accurate list of all current employees of the Company and all subcontractors will be provided.** A "current employee" means an employee who is on the payroll as of the date of contract award. An employee who has been laid off and is returning to the payroll is considered by HUD to be a "new hire." I understand and agree that the BHA may utilize the attached list(s) to determine compliance with the Section 3 hiring and training requirements.

Signed under the penalties of perjury.

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

Date: \_\_\_\_\_

By: \_\_\_\_\_  
[Signature]  
Duly Authorized

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**FORM 3**

**Contractor / Subcontractor Section 3 Hiring and Training Opportunities**

*This form is to be completed by the prime contractor and all subcontractors, if any. Provide estimated hiring needs, Section 3 hiring and training opportunities, dates of work, and labor hours.*

<b>Company Name</b>	
<b>Owner or Officer Name</b>	
<b>Address</b>	
<b>Phone Number</b>	
<b>BHA Project No.</b>	

Job Category	Number of positions needed to complete project	Number of positions filled by current employees*	Number of positions to be filled by Section 3 Residents	Anticipated dates of work	Total project labor hours expected
<i>Example: Carpenter</i>	3	2	1	10/1/11-1/1/12	2200
1) Professionals					
2) Technicians					
3) Office/Clerical					
4) Trade:					
5) Trade:					
6) Trade:					
7) Tenant Coordinator					
8) Other:					
<b>Totals</b>					

The above table represents an accurate estimate of workforce needs for this project and also represents the number of Section 3 residents that the company proposes to employ. A "current employee" means an employee who is on the payroll as of the date of contract award. An employee who has been laid off and is returning to the payroll is considered by HUD to be a "new hire."

Signed under the penalties of perjury.

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

Date: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
[Signature]  
Duly Authorized

# FORM 4

## Contractor / Subcontractor Section 3 Contracting Opportunities

*This form is to be completed by the prime contractor and all subcontractors other than filed-sub-trades. Fill in the table below if there is projected subcontracting. If there is no projected subcontracting, write "No Subcontracting" and sign below. The prime contractor should include information on all subcontracts, including filed sub-trades and non-filed sub-trades. Include estimated intended purchasing of materials through Section 3 Business Concerns on this form.*

Sub-trade and Company (if known)	Filed Sub-trade? (Y/N)	Section 3 Business Concern? (Y/N)	Specification Reference	Amount of Contract
Example: Site Security, ABC Security Co.	N	Y	06200	\$18,000
1)				
2)				
3)				
4)				
5)				
6)				
7)				
8)				

The above table represents an accurate list of subcontracting needs for this project and also represents the number of Section 3 business concern subcontracts that the company proposes to award.

Signed under the penalties of perjury.

[Company]

Date: \_\_\_\_\_

By: \_\_\_\_\_  
[Signature]  
Duly Authorized

**FORM 5**  
**Monthly Section 3 Report**

*This form or a certified substitute document containing the information requested below is to be completed by the prime contractor and all subcontractors, if any, and submitted within 5 business days of each month of the contract term. Attach verifications (e.g., Section 3 Resident Affidavit and copy of photo identification) as necessary.*

BHA Job No. \_\_\_\_\_ Month Ending: \_\_\_\_\_

**NEW HIRES**

Employee Name (Report New Hires Only)	Job Title	Section 3 Resident? (Y/N)	Address	Date Hired	Hours this month	Hours to date	Cumulative Wages
Example: Gladys Jones	Laborer	Y	Franklin Field, 100 Ames St. Dorchester, MA 02124	10/15/11	124	620	24,200
1)							
2)							
3)							
4)							
5)							
6)							

**SECTION 3 BUSINESS CONCERNS**

Section 3 Business Concern	Address	Dates of Work	Contract Price	Paid to Date	Amount Remaining to be paid
Example: ABC Security Co.	123 Main St., Boston MA 02111	11/1/11- 5/30/12	15,000	2,500	12,500
1)					
2)					
3)					
4)					

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

Date: \_\_\_\_\_

By: \_\_\_\_\_  
[Signature]  
Duly Authorized

# Request for Proposals: Developer Services for Mary Ellen McCormack Development

BHA Job. No: 1416-01

## Appendix D: Fee Proposal

Proposer: \_\_\_\_\_ (print—sign bottom of page 3)

Project Costs.....\$  (a)  
(Total Development Costs exclusive of Developer Fee, BHA Fee, BHA Asset Mgmt Fee, all reserves)

Number of Housing Units.....  (b)

### I. Developer Fee

Total Fee (including overhead) to be paid to the Developer will not exceed.....\$  (c)

Total Developer Fee per unit equals .....\$  (d) = (c) / (b)

As a percentage of Project Costs, this Developer Fee equals.....  % (e) = (c) / (a)

This Fee will be paid to the Developer according to the following schedule:

BENCHMARK	Amount	Percentage of Total Fee

**Request for Proposals: Developer Services for Mary Ellen McCormack Development**  
**BHA Job. No: 1416-01**

**Appendix D: Fee Proposal**

Proposer: \_\_\_\_\_ (print—sign bottom of page 3)

**II. BHA Fee**

Total Fee to be paid to the BHA ..... \$  (f) = (c) / 3

BHA Fee per unit equals ..... \$  (g) = (f) / (b)

As a percentage of Project Costs, this BHA Fee equals .....  % (h) = (f) / (a)

This Fee will be paid to the BHA according to the following schedule:

BENCHMARK	Amount	Percentage of Total Fee

**III. Total Development Fee**

The Total Development Fee (Developer Fee plus BHA Fee) will be ..... \$  (i) = (c) + (f)

As a percentage of Project Costs, this Total Development Fee equals .....  % (j) = (i) / (a)

Which percentage is within HUD Safe Harbor Standards.

**Request for Proposals: Developer Services for Mary Ellen McCormack Development**

**BHA Job. No: 1416-01**

**Appendix D: Fee Proposal**

Proposer: \_\_\_\_\_ (print—sign bottom of page 3)

**IV. BHA Asset Management Fee**

The BHA will be paid an Asset Management Fee on an annual basis to built into the operating budget for each phase.

For year one of operations, on a per-unit basis,

BHA's Asset Management Fee will equal..... \$  per unit (k)

Which will be the basis for negotiating the BHA's Asset Management fee in future years.

Signed:

Signature

Name

Title



# MARY ELLEN McCORMACK MA 2-23

SOUTH BOSTON

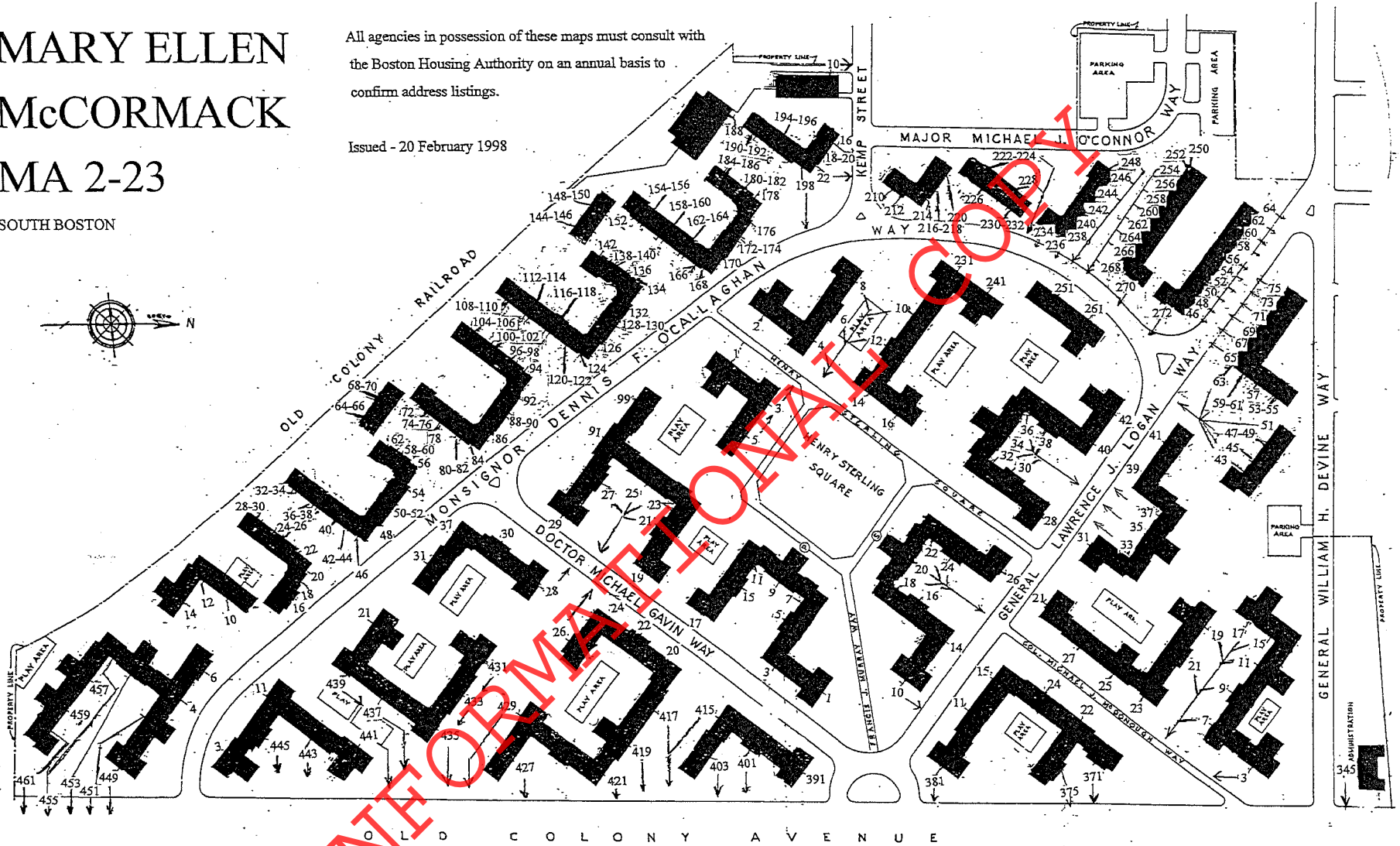


NOTE: Arrows indicate the association of unit number to street name.

All agencies in possession of these maps must consult with the Boston Housing Authority on an annual basis to confirm address listings.

Issued - 20 February 1998

APPENDIX "E"



Appendix F

**ENTERPRISE GREEN COMMUNITIES CRITERIA**

INFORMATIONAL COPY



M = MANDATORY

# = AVAILABLE OPTIONAL POINTS

## 2011 Enterprise Green Communities Criteria Checklist

This checklist provides an overview of the technical requirements within the Enterprise Green Communities Criteria. **To achieve Enterprise Green Communities Certification, all projects must achieve compliance with the Criteria mandatory measures applicable to that construction type. Additionally, New Construction projects must achieve 35 optional points, Substantial Rehab projects must achieve 30 optional points, and Moderate Rehab projects must also achieve 30 optional points.**

### 1: INTEGRATIVE DESIGN

☐ YES ☐ NO ☐ MAYBE

M

#### 1.1a Green Development Plan: Integrative Design Meeting(s)

Conduct one or more integrative design meetings and submit a Green Development Plan or equivalent documentation.

☐ YES ☐ NO ☐ MAYBE

M

#### 1.1b Green Development Plan: Criteria Documentation

Create design and construction documentation to include information on implementation of appropriate Enterprise Green Communities Criteria.

☐ YES ☐ NO ☐ MAYBE

2

#### 1.2a Universal Design *(New Construction only)*

Design a minimum of 15% of the dwelling units (no fewer than one) in accordance with ICC/ANSI A117.1, Type A, Fully Accessible guidelines.

☐ YES ☐ NO ☐ MAYBE

2 or 3

#### 1.2b Universal Design *(Substantial and Moderate Rehab only)*

Design a minimum of 10% of the dwelling units (no fewer than one) in accordance with ICC/ANSI A117.1, Type A, Fully Accessible guidelines [2 points] and, for an additional point, the remainder of the ground floor units and elevator-reachable units should have accessible unit entrances.

SUBTOTAL OPTIONAL POINTS

### 2: LOCATION + NEIGHBORHOOD FABRIC

☐ YES ☐ NO ☐ MAYBE

M

#### 2.1 Sensitive Site Protection *(New Construction only)*

Do not locate new development, including buildings, built structures, roads, or other parking areas, on portions of sites that meet any of the following provisions:

- Land within 100 feet of wetlands, including isolated wetlands or streams
- Land on slope greater than 15%
- Land with prime soils, unique soils, or soils of state significance
- Public parkland
- Land that is specifically identified as habitat for any species on federal or state threatened or endangered lists
- Land with elevation at or below the 100-year floodplain

☐ YES ☐ NO ☐ MAYBE

M

#### 2.2 Connections to Existing Development and Infrastructure *(New Construction only, except for projects located on rural tribal lands, in colonias communities, or in communities of population less than 10,000)*

Locate project on a site with access to existing roads, water, sewers, and other infrastructure within or contiguous to existing development. Connect the project to the pedestrian grid.



M = MANDATORY

# = AVAILABLE OPTIONAL POINTS

**LOCATION + NEIGHBORHOOD FABRIC (CONTINUED)**
☐ YES ☐ NO ☐ MAYBE

M

**2.3 Compact Development** *(New Construction only)*

Design and build the project to a density of at least:

- *Urban/Small Cities:* 10 dwelling units per acre, or at least 75% of surrounding net residential density, whichever is greater
- *Suburban/Mid-Size Towns:* 7 dwelling units per acre, or at least 75% of surrounding net residential density, whichever is greater
- *Rural/Tribal/Small Towns:* 5 units per acre for detached or semi-detached housing; 10 units per acre for townhomes; 15 units per acre for apartments

☐ YES ☐ NO ☐ MAYBE

5 or 6

**2.4 Compact Development**

Design and build the project to a density of at least:

- *Urban/Small Cities:* 15 dwelling units per acre, or at least 75% of surrounding net residential density, whichever is greater [5 points]
- *Suburban/Mid-Size Towns:* 10 dwelling units per acre, or at least 75% of surrounding net residential density, whichever is greater [6 points]
- *Rural/Tribal/Small Towns:* 7.5 units per acre for detached or semi-detached housing; 12 units per acre for townhomes; 20 units per acre for apartments [6 points]

☐ YES ☐ NO ☐ MAYBE

M

**2.5 Proximity to Services** *(New Construction only)*

Locate the project within:

- *Urban/Small Cities:* a 0.25-mile walk distance of at least two **OR** a 0.5-mile walk distance of at least four of the list of facilities
- *Suburban/Mid-Size Towns:* a 0.5-mile walk distance of at least three **OR** a 1-mile walk distance of at least six of the list of facilities
- *Rural/Tribal/Small Towns:* two miles of at least two of the list of facilities

☐ YES ☐ NO ☐ MAYBE

M

**2.6 Preservation of and Access to Open Space: Rural/Tribal/Small Towns Only** *(New Construction only)*Set aside a minimum of 10% of the total project acreage as open space for use by residents **OR** locate project within a 0.25-mile walk distance of dedicated public open space that is a minimum of 0.75 acres
☐ YES ☐ NO ☐ MAYBE

2 max

**2.7 Preservation of and Access to Open Space**

Set aside a percentage of the total project acreage as open space for use by residents:

20% [1 point]; 30% [2 points]; and 40% + written statement of preservation/conservation policy for set-aside land [3 points]

☐ YES ☐ NO ☐ MAYBE

5

**2.8 Access to Public Transportation**

Locate the project within:

- *Urban/Small Cities:* a 0.5-mile walk distance of combined transit services (bus, rail, and ferry) constituting 76 or more transit rides per weekday and 32 or more transit rides on the weekend
- *Suburban/Mid-Size Towns:* a 0.5-mile walk distance of combined transit services (bus, rail, and ferry) constituting 60 or more transit rides per weekday and some type of weekend ride option
- *Rural/Tribal/Small Towns:* 5-mile distance of either a vehicle share program, a dial-a-ride program, an employer van pool, or public-private regional transportation

☐ YES ☐ NO ☐ MAYBE

5

**2.9 Walkable Neighborhoods: Connections to Surrounding Neighborhood—Rural/Tribal/Small Towns**

Connect the project to public spaces, open spaces, and adjacent development by providing at least three separate connections from the project to sidewalks or pathways in surrounding neighborhoods and natural areas.



M = MANDATORY

# = AVAILABLE OPTIONAL POINTS

<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE		<b>7</b> <b>max</b>	<b>LOCATION + NEIGHBORHOOD FABRIC (CONTINUED)</b>  <b>2.10 Smart Site Location: Passive Solar Heating/Cooling</b> Demonstrate a building with a passive solar design, orientation, and shading that meet specified guidelines. <i>Select one:</i> <ul style="list-style-type: none"> <li>• Single building—New Construction [7 points]</li> <li>• Multiple buildings—New Construction [7 points]</li> <li>• Moderate or Substantial Rehab [7 points]</li> </ul>
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE		<b>2</b>	<b>2.11 Brownfield or Adaptive Reuse Site</b> Locate the project on a brownfield or adaptive reuse site. <i>Select either:</i> adaptive reuse site [2 points] or brownfield remediation [2 points]
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE		<b>6</b>	<b>2.12 Access to Fresh, Local Foods</b> Pursue one of three options to provide residents and staff with access to fresh, local foods, including neighborhood farms and gardens; community-supported agriculture; proximity to farmers market.
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE		<b>4</b>	<b>2.13 LEED for Neighborhood Development Certification</b> Locate the project in a Stage 2 Pre-Certified LEED for Neighborhood Development plan or a Stage 3 LEED for Neighborhood Development Certified Neighborhood Development.
		SUBTOTAL OPTIONAL POINTS	
<b>3: SITE IMPROVEMENTS</b>			
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE		<b>M</b>	<b>3.1 Environmental Remediation</b> Conduct an environmental site assessment to determine whether any hazardous materials are present on site.
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE		<b>M</b>	<b>3.2 Erosion and Sedimentation Control</b> <i>(Except for infill sites with buildable area smaller than one acre)</i> Implement EPA's Best Management Practices for erosion and sedimentation control during construction.
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE		<b>M</b>	<b>3.3 Low-Impact Development</b> <i>(New Construction only)</i> Projects located on greenfields must meet the list of low-impact development criteria.
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE		<b>M</b>	<b>3.4 Landscaping</b> Provide new plants (including trees, shrubs, and ground cover) such that at least 50% of area available for landscaping is planted with native or adaptive species, all new plants are appropriate to the site's soil and microclimate, and none of the new plants is an invasive species.
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE		<b>M</b>	<b>3.5 Efficient Irrigation and Water Reuse</b> If irrigation is utilized, install an efficient irrigation or water reuse system.
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE		<b>2 or 6</b>	<b>3.6 Surface Stormwater Management</b> Retain, infiltrate, and/or harvest stormwater on site. <i>Select only one:</i> partial stormwater retention [2 points] or full stormwater retention [6 points]
		SUBTOTAL OPTIONAL POINTS	



M = MANDATORY

# = AVAILABLE OPTIONAL POINTS

## 4: WATER CONSERVATION

☐ YES ☐ NO ☐ MAYBE

M

## 4.1 Water-Conserving Fixtures

Install or retrofit water-conserving fixtures in all units and any common facilities with the following specifications: Toilets—1.28 gpf; Urinals—0.5 gpf; Showerheads—2.0 gpm; Kitchen faucets—2.0 gpm; Bathroom faucets—1.5 gpm

☐ YES ☐ NO ☐ MAYBE
6  
max

## 4.2 Advanced Water-Conserving Appliances and Fixtures

Install or retrofit water-conserving fixtures in all units and any common facilities with the following specifications: Toilets—1.2 gpf; Showerheads—1.5 gpm; Kitchen faucets—1.5 gpm; Bathroom faucets—0.5 gpm. Select any, or all, of the options:

- Toilets [2 points]
- Showerheads [2 points]
- Faucets—kitchen and bathroom [2 points]

☐ YES ☐ NO ☐ MAYBE
4  
max

## 4.3 Water Reuse

Harvest, treat, and reuse rainwater and/or greywater to meet a portion of the project's water needs.

- 10% reuse [1 point]
- 20% reuse [2 points]
- 30% reuse [3 points]
- 40% reuse [4 points]

SUBTOTAL OPTIONAL POINTS

## 5: ENERGY EFFICIENCY

☐ YES ☐ NO ☐ MAYBE

M

5.1a Building Performance Standard: Single family and Multifamily (three stories or fewer)  
(New Construction only)

Certify the project under ENERGY STAR New Homes.

☐ YES ☐ NO ☐ MAYBE

M

5.1b Building Performance Standard: Multifamily (four stories or more)  
(New Construction only)

Demonstrate compliance with EPA's Multifamily High-Rise program (MFHR) using either the prescriptive or the performance pathway.

☐ YES ☐ NO ☐ MAYBE

M

5.1c Building Performance Standard: Single family and Multifamily (three stories or fewer)  
(Substantial and Moderate Rehab only)

Demonstrate that the final energy performance of the building is equivalent to a Home Energy Rating System (HERS) Index of 85.

☐ YES ☐ NO ☐ MAYBE

M

5.1d Building Performance Standard: Multifamily (four stories or more)  
(Substantial and Moderate Rehab only)

Demonstrate that the final energy performance of the building is equivalent to ASHRAE 90.1-2007.

☐ YES ☐ NO ☐ MAYBE
15  
max

## 5.2 Additional Reductions in Energy Use

Improve whole-building energy performance by percentage increment above baseline building performance standard for additional points.

☐ YES ☐ NO ☐ MAYBE

M

## 5.3 Sizing of Heating and Cooling Equipment

Size heating and cooling equipment in accordance with the Air Conditioning Contractors of America (ACCA) Manuals, Parts J and S, or ASHRAE handbooks.

☐ YES ☐ NO ☐ MAYBE

M

## 5.4 ENERGY STAR Appliances

If providing appliances, install ENERGY STAR-labeled clothes washers, dishwashers, and refrigerators.



M = MANDATORY

# = AVAILABLE OPTIONAL POINTS

**ENERGY EFFICIENCY (CONTINUED)**
☐ YES ☐ NO ☐ MAYBE

M

**5.5a Efficient Lighting: Interior Units**

Follow the guidance appropriate for the project type: install the ENERGY STAR Advanced Lighting Package (ALP); **OR** follow the ENERGY STAR MFHR program guidelines, which require that 80% of installed lighting fixtures within units must be ENERGY STAR-qualified or have ENERGY STAR-qualified lamps installed; **OR** if replacing, new fixtures and ceiling fans must meet or exceed ENERGY STAR efficiency levels.

☐ YES ☐ NO ☐ MAYBE

M

**5.5b Efficient Lighting: Common Areas and Emergency Lighting**

Follow the guidance appropriate for the project type: use ENERGY STAR-labeled fixtures or any equivalent high-performance lighting fixtures and bulbs in all common areas; **OR** if replacing, new common space and emergency lighting fixtures must meet or exceed ENERGY STAR efficiency levels. For emergency lighting, if installing new or replacing, all exit signs shall meet or exceed LED efficiency levels and conform to local building codes.

☐ YES ☐ NO ☐ MAYBE

M

**5.5c Efficient Lighting: Exterior**

Follow the guidance appropriate for the project type: install ENERGY STAR-qualified fixtures or LEDs with a minimum efficacy of 45 lumens/watt; **OR** follow the ENERGY STAR MFHR program guidelines, which require that 80% of outdoor lighting fixtures must be ENERGY STAR-qualified or have ENERGY STAR-qualified lamps installed; **OR** if replacing, install ENERGY STAR compact fluorescents or LEDs with a minimum efficacy of 45 lumens/watt.

☐ YES ☐ NO ☐ MAYBE

M

**5.6a Electricity Meter** (*New Construction and Substantial Rehab only*)

Install individual or sub-metered electric meters in all dwelling units.

☐ YES ☐ NO ☐ MAYBE

3

**5.6b Electricity Meter** (*Moderate Rehab only*)

Install individual or sub-metered electric meters in all dwelling units.

☐ YES ☐ NO ☐ MAYBE
12  
max**5.7a Renewable Energy**

Install photovoltaic (PV) panels, wind turbines, or other electric-generating renewable energy source to provide a specified percentage of the project's estimated energy demand.

☐ YES ☐ NO ☐ MAYBE

1 or 2

**5.7b Photovoltaic/Solar Hot Water Ready**

Site, design, engineer, and/or plumb the development to accommodate installation of photovoltaic (PV) or solar hot water system in the future.

☐ YES ☐ NO ☐ MAYBE

5

**5.8 Advanced Metering Infrastructure**

Site, design, engineer, and wire the development to accommodate installation of smart meters and/or be able to interface with smart grid systems in the future.

SUBTOTAL OPTIONAL POINTS

**6: MATERIALS BENEFICIAL TO THE ENVIRONMENT**
☐ YES ☐ NO ☐ MAYBE

M

**6.1 Low/No VOC Paints and Primers**

All interior paints and primers must be less than or equal to the following VOC levels: Flats—50 g/L; Non-flats—50 g/L; Floor—100 g/L

☐ YES ☐ NO ☐ MAYBE

M

**6.2 Low/No VOC Adhesives and Sealants**

All adhesives must comply with Rule 1168 of the South Coast Air Quality Management District. All caulks and sealants must comply with regulation 8, rule 51, of the Bay Area Air Quality Management District.

☐ YES ☐ NO ☐ MAYBE

M

**6.3 Construction Waste Management**

Commit to following a waste management plan that reduces non-hazardous construction and demolition waste by at least 25% by weight through recycling, salvaging, or diversion strategies.



M = MANDATORY

# = AVAILABLE OPTIONAL POINTS

<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	<b>5</b> <b>max</b>	<b>MATERIALS BENEFICIAL TO THE ENVIRONMENT (CONTINUED)</b>  <b>6.4 Construction Waste Management: Optional</b> Determine percentage of waste diversion and earn all points below that threshold: <ul style="list-style-type: none"> <li>• 35% waste diversion [1 point]</li> <li>• 45% waste diversion [1 point]</li> <li>• 55% waste diversion [1 point]</li> <li>• 65% waste diversion [1 point]</li> <li>• 75% waste diversion [1 point]</li> </ul>
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	<b>5</b>	<b>6.5 Recycling Storage for Multifamily Project</b> Provide one or more easily accessible, permanent areas for the collection and storage of materials for recycling.
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	<b>5</b> <b>max</b>	<b>6.6 Recycled Content Material</b> Incorporate building materials that are composed of at least 25% post-consumer recycled content or at least 50% post-industrial recycled content. <i>Select from the following:</i> <ul style="list-style-type: none"> <li>• Framing materials [1 point]</li> <li>• Exterior materials: siding, masonry, roofing [1 point]</li> <li>• Concrete/cement and aggregate [1 point]</li> <li>• Drywall/interior sheathing [1 point]</li> <li>• Flooring materials [1 point]</li> </ul>
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	<b>5</b> <b>max</b>	<b>6.7 Regional Material Selection</b> Use products that were extracted, processed, and manufactured within 500 miles of the home or building for a minimum of 50% of the building material value (based on cost). <i>Select any or all of these options:</i> <ul style="list-style-type: none"> <li>• Framing materials [1 point]</li> <li>• Exterior materials: siding, masonry, roofing [1 point]</li> <li>• Concrete/cement and aggregate [1 point]</li> <li>• Drywall/interior sheathing [1 point]</li> <li>• Flooring materials [1 point]</li> </ul>
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	<b>5</b>	<b>6.8 Certified, Salvaged, and Engineered Wood Products</b> Commit to using wood products and materials of at least 25% that are (by cost): FSC-certified, salvaged products, or engineered framing materials without urea-formaldehyde binders.
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	<b>1 or 3</b>	<b>6.9a Reduced Heat-Island Effect: Roofing</b> Use Energy Star-compliant roofing or install a "green" (vegetated) roof for at least 50% of the roof area. <i>Select only one: cool roof [3 points] or green roof [1 point]</i>
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	<b>2</b>	<b>6.9b Reduced Heat-Island Effect: Paving</b> Use light-colored, high-albedo materials and/or an open-grid pavement, with a minimum solar reflectance of 0.3, over at least 50% of the site's hardscaped area.
SUBTOTAL OPTIONAL POINTS		
<b>7: HEALTHY LIVING ENVIRONMENT</b>		
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	<b>M</b>	<b>7.1 Composite Wood Products that Emit Low/No Formaldehyde</b> All composite wood products must be certified compliant with California 93120. If using a composite wood product that does not comply with California 93120, all exposed edges and sides must be sealed with low-VOC sealants.





M = MANDATORY

# = AVAILABLE OPTIONAL POINTS

<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	M	<b>HEALTHY LIVING ENVIRONMENT (CONTINUED)</b>  <b>7.2 Environmentally Preferable Flooring</b> Do not install carpets in entryways, laundry rooms, bathrooms, kitchens/kitchenettes, utility rooms, and all rooms of ground-connected floors. Any carpet products used must meet the Carpet and Rug Institute's Green Label or Green Label Plus certification for carpet, pad, and carpet adhesives. Any hard surface flooring products used must be either ceramic tile, unfinished hardwood floors, <b>OR</b> in compliance with the Scientific Certification System's FloorScore program criteria.
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	4	<b>7.3 Environmentally Preferable Flooring: Alternative Sources</b> Use non-vinyl, non-carpet floor coverings in all rooms of building.
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	M	<b>7.4a Exhaust Fans: Bathroom</b> ( <i>New Construction and Substantial Rehab only</i> ) Install Energy Star-labeled bathroom fans that exhaust to the outdoors, are connected to a light switch, and are equipped with a humidistat sensor, timer, or other control (e.g., occupancy sensor, delay off switch, ventilation controller).
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	6	<b>7.4b Exhaust Fans: Bathroom</b> ( <i>Moderate Rehab only</i> ) Install Energy Star-labeled bathroom fans that exhaust to the outdoors, are connected to a light switch, and are equipped with a humidistat sensor, timer, or other control (e.g., occupancy sensor, delay off switch, ventilation controller).
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	M	<b>7.5a Exhaust Fans: Kitchen</b> ( <i>New Construction and Substantial Rehab only</i> ) Install power-vented fans or range hoods that exhaust to the exterior at the appropriate cfm rate, per ASHRAE 62.2, or install a central ventilation system with rooftop fans that meet efficiency criteria.
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	6	<b>7.5b Exhaust Fans: Kitchen</b> ( <i>Moderate Rehab only</i> ) Install power-vented fans or range hoods that exhaust to the exterior at the appropriate cfm rate, per ASHRAE 62.2, or install a central ventilation system with rooftop fans that meet efficiency criteria.
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	M	<b>7.6a Ventilation</b> ( <i>New Construction and Substantial Rehab only</i> ) Install a ventilation system for the dwelling unit capable of providing adequate fresh air per ASHRAE requirements for the building type.
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	5	<b>7.6b Ventilation</b> ( <i>Moderate Rehab only</i> ) Install a ventilation system for the dwelling unit capable of providing adequate fresh air per ASHRAE requirements for the building type.
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	M	<b>7.7 Clothes Dryer Exhaust</b> Clothes dryers must be exhausted directly to the outdoors using rigid-type duct work.
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	M	<b>7.8 Combustion Equipment</b> Specify power-vented or direct vent equipment when installing new space and water-heating equipment in New Construction and any Substantial and Moderate Rehab projects.
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	M	<b>7.9a Mold Prevention: Water Heaters</b> Provide adequate drainage for water heaters that includes drains or catch pans with drains piped to the exterior of the dwelling.
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	M	<b>7.9b Mold Prevention: Surfaces</b> In bathrooms, kitchens, and laundry rooms, use materials that have durable, cleanable surfaces.
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	M	<b>7.9c Mold Prevention: Tub and Shower Enclosures</b> Use non-paper-faced backing materials such as cement board, fiber cement board, or equivalent in bathrooms.



M = MANDATORY

# = AVAILABLE OPTIONAL POINTS

		<b>HEALTHY LIVING ENVIRONMENT (CONTINUED)</b>
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	M	<b>7.10 Vapor Barrier Strategies</b> <i>(New Construction and Rehab Projects with foundation work only)</i> Install vapor barriers that meet specified criteria appropriate for the foundation type.
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	M	<b>7.11 Radon Mitigation</b> <i>(New Construction and Substantial Rehab only)</i> For New Construction in EPA Zone 1 and 2 areas, install passive radon-resistant features below the slab. For Substantial Rehab projects in those Zones, test for the presence of radon and mitigate if elevated levels exist.
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	M	<b>7.12 Water Drainage</b> <i>(New Construction and Rehab projects replacing assemblies called out in Criterion only)</i> Provide drainage of water away from windows, walls, and foundations by implementing list of techniques.
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	M	<b>7.13 Garage Isolation</b> Follow list of criteria for projects with garages, including: provide a continuous air barrier between the conditioned (living) space and any garage space to prevent the migration of any contaminants into the living space, and install a CO alarm inside the house in the room with a door to the garage and outside all sleeping areas.
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	M	<b>7.14 Integrated Pest Management</b> Seal all wall, floor, and joint penetrations with low-VOC caulking or other appropriate sealing methods to prevent pest entry.
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	M	<b>7.15 Lead-Safe Work Practices</b> <i>(Substantial and Moderate Rehab only)</i> For properties built before 1978, use lead-safe work practices consistent with the EPA's Renovation, Repair, and Painting Regulation and applicable HUD requirements.
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	9	<b>7.16 Smoke-Free Building</b> Implement and enforce a no smoking policy in all common, individual living areas, and with a 25-foot perimeter around the exterior of all residential buildings.
		SUBTOTAL OPTIONAL POINTS
<b>8. OPERATIONS + MAINTENANCE</b>		
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	M	<b>8.1 Building Maintenance Manual</b> <i>(All Multifamily Projects)</i> Provide a building maintenance manual that addresses maintenance schedules and other specific instructions related to the building's green features.
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	M	<b>8.2 Resident Manual</b> Provide a guide for homeowners and renters that explains the intent, benefits, use, and maintenance of green building features.
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	M	<b>8.3 Resident and Property Manager Orientation</b> Provide a comprehensive walk-through and orientation for residents and property managers using the appropriate building maintenance or resident's manual.
<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> MAYBE	12	<b>8.4 Project Data Collection and Monitoring System</b> Collect and monitor project performance data on energy, water, and, if possible, healthy living environments for a minimum of five years.
		SUBTOTAL OPTIONAL POINTS
		<b>TOTAL OPTIONAL POINTS</b>

Appendix G

**RESPONSIBILITY CHECKLIST**

INFORMATIONAL COPY

## Mixed-Finance Responsibility Checklist

PHA (Admin)	PHA Consultants	Developer	
			<p><b>Enter a 1, 2 or 3 in the left-hand column to indicate the level of responsibility that each party has in completing the listed tasks. The party with ultimate responsibility for task completion should be ranked 1. The party that assists in task completion should be ranked 2. The party that only reviews or monitors task completion should be ranked 3. If a party is not involved in task completion, leave its block blank.</b></p>
2		1	Facilitate and foster involvement of residents in major decisions.
2		1	Promote communication with neighborhood groups.
2		1	Supervise and coordinate activities of all team members/partners.
2		1	Prepare and update/revise, as necessary, the project implementation schedule and budget.
1	3	2	Submit monthly financial, management and project status activity reports to HUD.
1		2	Prepare all required submissions and reports to HUD and other agencies.
			<b>Predevelopment Activities</b>
		1	Initiate Site Acquisition Activities, if applicable.
		1	Provide evidence of adequate zoning; prepare PUD, if required.
1	2		Develop a Relocation Plan; relocate residents.
		1	Test for hazardous materials and develop an abatement procedure; obtain environment review.
2		1	Prepare Demolition and/or Disposition Plan and submit to HUD for approval.
2		1	Prepare Acquisition Plan (if applicable) and submit to HUD for approval.
		1	Design and obtain commitments for site improvements
			<b>Revitalization Plan</b>
2		1	Structure and implement participatory planning process
2		1	Develop Master Plan for site and neighborhood revitalization activities.
2		1	Obtain local backing and secure letters of support.
			<b>Legal</b>
			<i>HUD Compliance</i>
1			Certify that the PHA has legal authority under local laws to develop housing and to proceed with the project as proposed.
1			Provide evidence the owner has site control.
2		1	Provide evidence the proposed development complies with applicable zoning or won't be delayed by rezone.
		1	Complete subdivision if necessary.
		1	Provide ALTA form title policy.
		1	Provide evidence of real estate property and leasehold tax exemption (PILOT).
1			Provide evidence that the existing Cooperation Agreement covers the mixed-finance PHA units.
2		1	Assist HUD field office/City with environmental (parts 50 and 58) review and Section 213 Clearance.
2	1		Advise team on mixed-finance regulations.
			<i>Procurement</i>
	1		Advise team on federal and local procurement regulations.
1	2		Draft and/or review RFPs
1			Draft and/or review contracts between all team members.
			<i>Negotiating the Deal</i>
	1		Represent PHA in negotiations with the developer.
		1	Develop ownership structure for mixed-finance rental and homeownership (LP, GP).
		1	Develop Organizational Documents of the owner.
		1	Prepare the Limited Partnership Agreement/Development Agreement.
1	2		Prepare the Regulatory and Operating Agreement - method for allocating operating subsidy and terms if unable to provide.
3	2	1	Coordinate/draft all mixed-finance legal evidentiaries, including loan documents, regulatory & operating agreement.
1	2		Negotiate with HUD on HUD evidentiaries and requirements.
2		1	Provide legal structure for ensuring the long-term affordability of the PHA stock.
		1	Prepare the Management Agreement, Management Plan and ACOP.
2	1		Advise on creation of management-related documents (e.g. site-based waiting list, tenant leases, ACOP)
			<i>Financing/Real Estate Services</i>
		1	Assist in financial structuring (e.g., LIHTC, tax-exempt bonds).
		1	Provide legal counsel on tax credit syndication to assure compliance with tax provisions.
		1	Provide legal counsel on bond issuance.
		1	Record real property legal description and title.
2	3	1	Prepare and review construction documents.
			<b>Procurement</b>
1			Prepare RFPs for consultants such as legal, financial, design, relocation, services, etc.

## Mixed-Finance Responsibility Checklist

PHA (Admin)	PHA Consultants	Developer	
Enter a 1, 2 or 3 in the left-hand column to indicate the level of responsibility that each party has in completing the listed tasks. The party with ultimate responsibility for task completion should be ranked 1. The party that assists in task completion should be ranked 2. The party that only reviews or monitors task completion should be ranked 3. If a party is not involved in task completion, leave its block blank.			
1			Prepare RFP for development partner.
1			Coordinate pre-proposal conferences; review, analyze and score proposals; check references.
1	2		Obtain an independent cost estimate; negotiate fees.
1			Develop consultant contracts.
1			Create Developer Agreement.
1			Submit contracts to HUD for review and approval.
			<b>Finance</b>
	1		Identify and secure financial resources including LIHTC, conventional financing and other capital.
	1		Prepare initial development budget.
	1		Prepare preliminary operating proforma projecting annual income and expenses for 15 year period.
NA			Secure public housing capital funds.
	1		Prepare state/local financing applications and secure funding (e.g., LIHTC, bond cap).
NA			Request HUD authorization of front-end assistance for environmental remediation, demolition, relocation, planning and fees.
1	2		Submit a preliminary mixed-finance proposal for front-end assistance to HUD.
	1		Develop subsidy layering assumptions, operating & capital reserves assumptions and new ACC level.
			Conduct subsidy layering analysis to ensure project is not over-subsidized.
1	3	2	Submit mixed-finance full proposal to HUD.
1			Assure HUD that the Developer Fee and Operating Reserve are not funded from public housing capital funds.
	1		Advise the PHA on the impact of the mixed-finance transaction on the PHA-wide budget.
1			Assure HUD that common area improvements are paid pro-rata by public housing funds.
2	1		Provide TDC calculation for HUD review.
1			Submit proposed methodology for allocating operating subsidy to the development for HUD review.
	1		Secure credit enhancement for bonds.
	1		Underwrite and issue bonds and develop loan agreements.
	1		Syndicate tax credits and develop limited partnership agreement.
1	2		Submit evidentiaries to HUD
1			Execute mixed-finance ACC with HUD.
2	1		Close on all loans.
1	2		Execute final documentation with HUD as applicable.
	1		Maintain the required budgets and accounts in accordance with HUD and other funder requirements.
	1		Track funding contributions compared to loan and grant agreements.
1	2		Review and certify construction draw schedule on pro-rata PHA share.
NA			Release funds to development partner proportionate to construction work related to PHA units.
1			Represent PHA with HUD regarding ACC phase-out and Section 8 replacement.
1			Provide on-going operating subsidy.
			<b>Design</b>
	1		Conduct market analysis and feasibility study.
2	1		Develop preliminary site plan, design concepts and phasing.
2	1		Prepare preliminary development schedule.
	1		Develop design guidelines and construction quality standards for Development Agreement.
	1		Prepare design development and construction documents that satisfy ADA requirements.
2	1		Ensure that healthy, green and environmental opportunities are explored and incorporated (LEED, Enterprise Green Criteria, Net Zero)
	1		Submit construction documents to HUD to confirm PHA units are same size, appearance & reasonably distributed with market-rate units.
2	1		Monitor construction schedules and budgets.
2	1		Ensure that work performed is consistent with quality standards.
2	1		Review and approve/reject change orders.
2	1		Develop punch list and conduct final inspection.
			<b>Relocation</b>
1	2		Survey residents to determine their relocation needs and preferences.
1	2		Prepare relocation plan in accordance with URA and other applicable federal, state or local regulations.
2	1		Identify relocation housing units.
2	1		Provide residents with required legal notices for relocation.
2	1		Counsel residents regarding relocation options, timing and relocation payments.
2	1		Schedule moves.

## Mixed-Finance Responsibility Checklist

PHA (Admin)	PHA Consultants	Developer	
			<p><b>Enter a 1, 2 or 3 in the left-hand column to indicate the level of responsibility that each party has in completing the listed tasks. The party with ultimate responsibility for task completion should be ranked 1. The party that assists in task completion should be ranked 2. The party that only reviews or monitors task completion should be ranked 3. If a party is not involved in task completion, leave its block blank.</b></p>
2	1		Maintain accurate files.
2	1		Track and report relocation expenditures and obligations.
1	2		Maintain communication with relocated residents; provide required 18 month tracking and follow-up.
			<b>Resident Employment</b>
2	1		Develop Section 3 employment plan, goals and monitoring forms.
2	1		Monitor Section 3 performance of consultants/contractors.
1	2		Educate residents regarding any Section 3 employment opportunities.
			<b>Cost Estimating</b>
	1		Develop cost and contingency estimates at concept, design development and construction document phases.
	1		Perform cost justification/value engineering.
			<b>Construction</b>
	1		Develop phasing plan and construction critical path schedule.
	1		Obtain regulatory approvals and permits.
	1		Develop M/W/DBE participation goals.
	1		Prepare bidding package strategy and coordinate with A/E.
	1		Advertise, bid and award construction contracts.
	1		Initiate and complete hazardous materials abatement.
	1		Initiate and complete demolition.
	1		Initiate and complete construction of infrastructure.
	1		Initiate and complete construction of housing.
	1		Initiate and complete construction of community facilities.
	1		Establish construction draw schedule and monitor draws against schedule.
	1		Compile maintenance manuals and guarantees for transmittal to PHA.
2	1		Perform inspections, monitor contractor compliance and certify completion.
			<b>Property Management/Reoccupancy</b>
	1		Prepare a management plan that is responsive to the mixed income and self-sufficiency goals.
	1		Prepare operating expense and proforma.
	1		Develop management policies including community rules, lease, orientation, application process, etc.
	1		Develop a marketing program.
	1		Develop and hold reoccupancy training.
	1		Implement interim management, particularly if involving phased construction.
2	1	3	Return temporarily relocated residents to the development.
	1		Complete unit rent-up/sales.
	1		Implement long-term management plan.
	1		Provide documentation for ongoing compliance.
			<b>Asset Management</b>
1			Monitor compliance with regulations and report to HUD as required.
NA			<b>Close-Out of Capital Grant</b>
			Initiate DOFA.
			Complete cost certification.
			Conduct final audit of program activities and expenditures.
			Prepare final report in accordance with HUD's Grant Agreement.
			Transfer archival information.
			Reach EIOP.

## Appendix H

### **ENERGY EFFICIENCY AND SUSTAINABILITY CRITERIA**

In addition to meeting the general requirements for physical sustainability outlined in Part II(B) of the RFP, the Project must incorporate the following specific measures/specifications:

- Highly-insulated building envelopes meeting the following criteria:

Envelope Criteria	Townhomes	Midrise(s)
Above grade walls	R-27.5 + R-7.5 continuous	R-23.5 continuous
Roof	R-50	R-48 continuous (average)
Windows	U-0.3	U-0.3
Infiltration	3 ACH @50 Pa	3 ACH @ 50 Pa

- Direct-to-unit exhaust and supply ventilation systems with heat recovery
- All rooftops to be PV or solar-thermal ready, including optimum building orientation within the framework of the proposed master plan, roof design for appropriate structural loading, wiring or plumbing provided in shaft space and roof penetrations, and space allocated for future equipment.
- Hydronic heating and cooling systems with centralized sources per building, groups of buildings, or phase, with the ability to adapt heating and cooling sources with low-energy or renewable energy systems in the future.
- Heating and cooling energy use to be sub-metered by unit, even if heat is included in the tenant rent.
- Provide 100% Energy Star qualified hard-wired light fixtures and switching schemes to encourage utilization of daylight.
- All appliances and equipment shall be Energy Star rated; refrigerators shall be top-freezer configuration.
- Advanced storm water management systems; water-permeable walkways.

In addition to those building-related measures, the selected Developer will be expected to engage in an integrated design process with BHA, residents, and identified partners.

Appendix I

**HUD SAFE HARBOR AND COST CONTROL STANDARDS**

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## **Cost Control and Safe Harbor Standards for Rental Mixed-Finance Development**

**Revised: April 9, 2003**

In order to expedite the mixed-finance review process and control costs, HUD is instituting safe harbor and maximum fee ranges for a number of costs. In addition, HUD has provided guidance on several development issues. Unless otherwise noted, the cost controls and safe harbors apply to those phases for which a mixed-finance proposal is submitted after January 1, 2000. Any terms previously approved by HUD through approval of a pre-development agreement, development agreement, or program manager contract will not be reviewed again. This guidance is specific to rental developments, and does not apply to homeownership phases.

These policies were developed in consultation with housing authorities, HUD staff, and industry representatives, over the course of more than a year. Once drafted, they were circulated for public review, and the final cost controls included here reflect the many valuable comments received. HUD will continue to review the policies, based on experiences reported by housing authorities and other program participants, and may make alterations to the standards in the future.

Changes from the revised Cost Control and Safe Harbor Standards (January 2, 2002) are italicized in this alert and include the following:

- HOPE VI or other public housing funds may be used, on a case-by-case basis, to pay for up to 15% of the total developer fee/overhead amount to the developer prior to closing. A loan is not required.
- Operating subsidy and tenant rents used to fund a reserve must be used for eligible operating subsidy expenses.
- The property management fee for the public housing units may be calculated as 6% of imputed tax credit rents.

HUD's cost controls and safe harbors are contained in the following chart. The chart provides a brief definition of each term, lists the safe harbor and maximum allowable fees, and briefly describes the risk factors or circumstances that may result in a fee above the safe harbor standards. These guidelines should be used by housing authorities, developers, and consultants when negotiating terms and drafting documents for HUD review.

HUD will review the project terms when receiving Predevelopment and Development Agreements, Program Manager contracts, mixed-finance proposals, and/or other documents that contain negotiated terms. If a project is at or below a safe harbor standard, no further review will be required by HUD. If a project is above a safe harbor standard, additional review by HUD will be necessary. In order to approve terms above the safe harbor, the housing authority must demonstrate to HUD in writing that the negotiated terms are appropriate for the level of risk involved in the project, the scope of work, any specific circumstances of the development, and the local or national market for the services provided.

## Cost Control and Safe Harbor Standards

Item	Defining Criteria	Safe Harbor	Maximum
<p>Net Developer Fee for Rental Mixed-Finance Developments</p> <p>(Developer Fee and Overhead)</p>	<p>The safe harbor and maximum standards apply to the net developer fee, i.e., the portion of the developer fee received by the developer to cover overhead and profit.*</p> <p>Net developer fee is expressed as a percentage of the project costs. Project costs are defined as all hard and soft costs of constructing a particular component with the <b>exclusion</b> of the following:</p> <ul style="list-style-type: none"> <li>• Third-party costs paid by the PHA under contracts entered into directly by PHA and third parties, which will not be reimbursed to PHA at a mixed-finance closing (e.g., where the PHA contracts separately for demolition services);</li> <li>• The developer fee itself;</li> <li>• All costs related to family self-sufficiency and resident relocation activities; and,</li> <li>• All reserve accounts regardless of how characterized, including start-up reserves, operating deficit reserves, capital improvement reserves, initial operating period reserve, etc.</li> </ul> <p>Payments to developers such as “deferred developer fee” are considered part of the fee/overhead amount.</p> <p>Developers may receive up to a 1% additional fee (with a cap of 12% developer fee) if cost savings are realized. This 1% incentive fee must be paid from non-public housing funds.</p>	<p>9% or less of the project costs (profit and overhead); projects that do not have both LIHTC and public housing financing should have fees well below 9%.</p>	<p>12% of the project costs (profit and overhead).</p> <p>Fees above 12% will be considered only if allowed by the State Housing Finance Agency <b>and</b> with significant justification from the PHA and developer demonstrating the increased risk.</p>

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\* The safe harbor and maximum guidelines assume the net developer fee excludes any portion of the fee received by the developer or co-developer (including a PHA) that is returned to the project to fund operating reserves or to cover project costs.

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## Cost Control and Safe Harbor Standards

Item	Defining Criteria	Safe Harbor	Maximum
	<p>Developers with fees above the safe harbor standard should meet most or all of the following risk factors:</p> <ul style="list-style-type: none"> <li>• Developer guarantees are for large dollar amounts in proportion to project size and/or long terms;</li> <li>• Developer independently obtains financing, including tax credits (fee increases with both amount of financing and number of sources);</li> <li>• Developer obtains site control from an entity other than a PHA or PHA affiliate (fee increases with number of sites);</li> <li>• Project is small (i.e., 50 units or less);</li> <li>• Project is complex (e.g., in financial, legal, environmental, and/or political terms);</li> <li>• Project contains units without operating subsidy (i.e., market-rate or LIHTC only units);</li> <li>• Developer bears more than 25% of the predevelopment costs (until reimbursement at closing); and/or</li> <li>• The Developer Fee is deferred (paid out of positive cash flow from market-rate units).</li> </ul> <p>All criteria apply to both for-profit and non-profit developers.</p> <p>PHAs or PHA affiliates that act as developer can only receive fees if they are first returned to the project and, to the extent that funds are remaining, subsequently classified as program income and used for low-income housing purposes.</p>		

## Cost Control and Safe Harbor Standards

Item	Defining Criteria	Safe Harbor	Maximum
Pay-Out Schedule for Developer Fee/Overhead	<p>Public housing funds may not be used for payment of developer fee/overhead. HUD recommends the following limit on the pay-out schedule, to the extent that non-public housing funds are available, by phase:</p> <ul style="list-style-type: none"> <li>• Closing: Not to exceed 50% of the fee/overhead amount.</li> <li>• Construction Completion: 25% of the fee/overhead amount.</li> <li>• Stabilized Occupancy: 25% of the fee/overhead amount.</li> </ul> <p>A portion of the fee can be further deferred.</p> <p><i>On a case-by-case basis, HUD will consider advancing the developer funds where there is an extended predevelopment period caused by such external factors as environmental remediation consent orders, etc. If HUD determines such an advance is warranted, HUD will advance up to 15% of the total developer fee/overhead amount to the developer prior to closing using HOPE VI or other public housing funds.</i></p>	Within recommended pay-out schedule.	Payments of greater than 50% at closing or less than 25% at stabilized occupancy will be closely scrutinized.
Contractor Fee	<ul style="list-style-type: none"> <li>• Percentages are based on hard construction cost.</li> <li>• General Conditions includes the bond premium.</li> </ul>	Overhead: 2% Profit: 6% General Conditions: 6%	14% is the maximum for these combined costs provided that the PHA justifies why the 2/6/6 percentages for the individual costs cannot be met.

## Cost Control and Safe Harbor Standards

Item	Defining Criteria	Safe Harbor	Maximum
PHA Administrative/Consultant Costs	<ul style="list-style-type: none"> <li>Costs should reflect only actual documented expenditure of time and overhead cost (supplies, equipment, telephone, etc.)</li> <li>Such costs include both in-house staff time and outside consultants (program manager, development advisors, relocation specialists, etc.), but <b>exclude</b> outside legal and community and supportive services costs. On the HUD budgets, these costs may be captured under multiple BLIs.</li> <li>This cap applies to HOPE VI grantees awarded funds in 1998 or later, as well as to any non-HOPE VI mixed-finance projects with proposals submitted after January 1, 2000; HUD will evaluate earlier grants on a case-by-case basis. HUD will continue to evaluate whether this cap provides helpful guidance and controls costs without hampering the PHA's ability to implement the grant.</li> </ul>	3% of the total project budget (basis includes all hard and soft development costs <b>excluding</b> CSS expenses).	6% of the total project budget
Sharing of Third-party Pre-development Costs	<p>HUD recommends the following cost-sharing schedule:</p> <ul style="list-style-type: none"> <li>PHA and Developer split third-party costs 75/25.</li> <li>Developer's share of third-party costs (25%) will be reimbursed at closing out of available sources.</li> </ul> <p>Costs to be shared are all third-party costs under the developer's scope of work (e.g., A/E, market study, financing fees, etc.) incurred during the predevelopment period. Public housing funds may not be used to reimburse developer legal counsel prior to closing, and developer legal costs do not contribute to the developer's share of third-party costs.</p> <p>Exceptions to the schedule may be made for small, local, non-profit, and/or minority/disadvantaged firms on a case-by-case basis.</p>	Costs are shared up to 75% by the PHA and at least 25% by the Developer.	N/A
Equity Raise and Pay-In Schedule	HUD will not adopt a safe harbor equity raise or standard pay-in schedule, as these are highly competitive, market-driven numbers.	Current market standard.	N/A

## Cost Control and Safe Harbor Standards

Item	Defining Criteria	Safe Harbor	Maximum
Identity of Interest Parties	<ul style="list-style-type: none"> <li>• Identity of interest parties are those that share an ownership interest. Identity of interest relationships are most common between a developer/owner and construction management, general contractor (GC), private management firm, and/or investor.</li> <li>• PHAs are required to ensure cost competitiveness to the extent possible.</li> <li>• Where a developer and GC have an identity of interest, the PHA needs to show the GC was the lowest bidder in response to a public request for bids or request a waiver from HUD under 24 C.F.R. 941.606(n)(1)(ii)(B).</li> <li>• While the use of related or preferred entities as investors is permitted, HUD encourages PHAs to have their procured developer “shop around” to ensure they are getting a competitive yield.</li> </ul>	N/A	N/A

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## Cost Control and Safe Harbor Standards

Item	Defining Criteria	Safe Harbor	Maximum
Property Management Fees	<ul style="list-style-type: none"> <li>• Can be defined on a percentage of gross income or per-unit per month (PUM) basis.</li> <li>• If using the PUM basis for fee, fees should drop for vacant units.</li> <li>• PHAs and PHA Affiliates cannot earn a fee for property management of public housing units, but can cover their associated administrative expenses.</li> <li>• Fees may increase with higher-risk projects.</li> <li>• Different types of risk are associated both with mixed-income and solely public housing projects.</li> </ul>	<p>a) 6% effective gross income or,</p> <p>b) a flat PUM fee for occupied units that is supported by the local project-based Section 8 program in the area (use Field Office guidelines) or,</p> <p>c) 6% of imputed tax credit rent for the public housing units (assume public housing units are tax credit units, charge up to maximum tax credit rent, and take 6% of that amount).</p>	Proposals above the safe harbor will be closely scrutinized; higher fees will require significant justification and market support.
Price for Program Management Services	<ul style="list-style-type: none"> <li>• Typically a fixed-price contract.</li> <li>• Contracts must be performance-based with payments fixed to milestones (or monthly if tied to milestones).</li> <li>• Size of fee should be related to the specific scope and role PM is expected to play.</li> <li>• Costs for program management (either a full team or independently procured consultants) must be included in the PHA's Administrative Cost Cap.</li> <li>• PHAs must comply with the provision of the procurement regulations that requires a PHA to prepare a cost estimate for procured services prior to receipt of bids.</li> </ul>	N/A; the fee must be contained within the PHA's overall Administrative Cost Cap. Use checklist of responsibilities and clearly defined scope to limit costs.	N/A

## Cost Control and Safe Harbor Standards

Item	Defining Criteria	Safe Harbor	Maximum
Legal Fees	<ul style="list-style-type: none"> <li>• Largely independent of the size of the phase.</li> <li>• Attorneys should be used for legal functions.</li> <li>• Legal fees should be tied to a scope of work, which should be monitored. HUD will review PHA legal costs when reviewing HOPE VI development budgets.</li> <li>• In order to reduce costs and provide an incentive to reach closing, public housing funds may not be used to pay developer legal costs prior to closing.</li> <li>• HUD intends to produce further guidance on how PHAs should utilize their attorneys.</li> <li>• The procurement regulations state that for any RFP, the PHA must undertake a cost or price analysis prior to receipt of proposals.</li> </ul>	No express limit; public housing funds may not be used to reimburse developer legal counsel prior to closing. All legal costs will be reviewed by HUD.	N/A
Operating Deficit Reserve and Operating Subsidy Reserve	<ul style="list-style-type: none"> <li>• HUD is not establishing maximum or minimum levels of reserves to be maintained, as appropriate reserve levels depend upon the specific project and investor requirements.</li> <li>• Both reserves must be established with non-public housing funds, but may be replenished with public housing funds (i.e., operating subsidy or tenant rents from PHA-assisted units).</li> <li>• <i>If public housing funds are contributed to a reserve at any time, those funds in the reserve must be dedicated to the project or returned to the PHA to be used for eligible purposes.</i></li> <li>• <i>The portion of the reserve funded with public housing funds may not be used to pay for partnership exit taxes, debt repayment, or any other expense that is not an eligible use of public housing funds.</i></li> </ul>	N/A	N/A



**APPENDIX J  
DEVELOPMENT AGREEMENT**

**for a**

**MIXED-FINANCE REDEVELOPMENT PROJECT**

**at**

**MARY ELLEN MCCORMACK**

**Between**

**THE BOSTON HOUSING AUTHORITY**

**and**

**[DEVELOPER]**

**INFORMATIONAL COPY**

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#### List of Exhibits

A	Definitions
B	Project Schedule
C	Project Budget
D	Construction Completion Guaranty
E	Milestones
F	HUD Contractor/Certifications
G	Form of Contractor Consent
H	Map of Surrounding Neighborhood
I	Description of Project

- J Memorandum of Agreement for Resident Participation in Boston Housing Authority-Affiliated Mixed Finance Developments
- K Boundary Survey and Site Plan
- L BHA Minority and Women Participation Provision ("MWPP")
- M BHA Resident Employment Provision ("REP")

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## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** made as of this \_\_\_\_\_ day of \_\_\_\_\_ (the “**Effective Date**”), by and between **BOSTON HOUSING AUTHORITY**, a public body politic and corporate organized and existing under Chapter 121B of the General Laws of the Commonwealth of Massachusetts and Chapter 88 of the Acts of 1989, with its principal office at 52 Chauncy Street, Boston, MA (the “**BHA**”), and [**DEVELOPER**] (the “**Developer**”), (each a “**Party**” and together the “**Parties**”).

WITNESSETH:

WHEREAS, the BHA issued a Request for Proposals for certain developer services for the Mary Ellen McCormack Disposition and Development, BHA Job No. \_\_\_\_\_-01 (the “**RFP**”), to provide for the disposition by long term ground lease(s) of that land and improvements thereon to be known as the Mary Ellen McCormack development (the “**Property**”); and

WHEREAS, pursuant to the RFP, the Developer and its real estate development team were selected by the BHA to demolish some or all of the existing housing and any other structures on the Property; remediate any environmental conditions in regard to the Property; design, construct, rehabilitate, occupy, own, and operate new rental housing and other facilities (to the extent other facilities are contemplated to be constructed pursuant to this Agreement), all in accordance with this Agreement, and the “Governing Documents” referred to herein (the “**Project**”); and

WHEREAS, the Property and the Project layout, including the boundaries of the Project, are more particularly shown on that certain boundary survey and site plan attached hereto as **Exhibit K**; the boundary survey and site plan are not to be modified, amended, or supplemented without the prior written consent of the BHA; and

WHEREAS, the BHA and Developer have proposed to carry out the Project in accordance with this Agreement, the RFP, the Proposal, the Closing Documents (as and when entered into by the Parties thereto), the augmented Term Sheets (as applicable), and the HAP(s) (as and when approved by HUD) (collectively, the “**Governing Documents**”). All of the terms, covenants, and provisions of each of the Governing Documents are incorporated herein by reference, as if the full text of each Governing Document were set forth in full in this Agreement. In the event of any conflict or ambiguity between or among any of the Governing Documents, the controlling document shall be that which is set forth in **Section 16.07**.

**NOW, THEREFORE**, in consideration of the premises, and of the mutual obligations undertaken herein, the Parties, intending to be legally bound, hereby agree as follows:

## ARTICLE 1. DEFINITIONS AND EXHIBITS

**1.01. Certain Definitions.** All capitalized terms used in this Agreement, unless otherwise expressly defined herein, shall have the meaning given to such terms in Exhibit A.

**1.02. Exhibits.** The following Exhibits are hereby incorporated by reference and expressly made a part hereof

- Exhibit A --- Definitions
- Exhibit B --- Project Schedule
- Exhibit C --- Project Budget
- Exhibit D --- Construction Completion Guaranty
- Exhibit E --- Milestones
- Exhibit F --- HUD Contractor/Certification
- Exhibit G --- Form of Contractor Consent
- Exhibit H --- Map of Surrounding Neighborhood in South Boston
- Exhibit I --- Description of Project
- Exhibit J --- Memorandum of Agreement for Resident Participation in Boston Housing Authority-Affiliated Mixed Finance Developments
- Exhibit K --- Boundary Survey and Site Plan
- Exhibit L --- BHA Minority and Women Participation Provision ("MWPP")
- Exhibit M --- BHA Resident Employment Provision ("REP")

## ARTICLE 2. THE PROJECT

**2.01. The Project.** Developer shall perform or cause to be performed and supply or cause to be supplied all services, labor, materials, equipment and supplies necessary or desirable to complete the Project, including, but not limited to, the design, engineering, construction, testing, financing, sales and rent-up for the Project upon the terms, covenants, and conditions contained in the Governing Documents (the "**Work**"). Developer shall seek additional public and/or private resources in the event of unforeseen cost increases, as determined by the BHA in its sole and absolute discretion, provided, however, that in no event shall the term "additional public and/or private resources" be defined or interpreted to mean or refer to the BHA funds and funds to be made available by the BHA.

**2.02. The Developer.** The term "Developer" as used in this Agreement shall be deemed to include any single-purpose entity affiliated with Developer (the "**Owner Entity**" or "**Owner**"), which Developer will form to carry out the Project, subject to the BHA's prior written consent, which shall not be unreasonably conditioned, withheld or delayed. The Owner Entity of the Project or each sub-Phase thereof will enter into a ground lease for the Project or each sub-Phase thereof with the BHA or its affiliate corporation.

**2.03. Time of Performance.** The Developer shall meet all specific milestones for obligation and expenditure of public housing capital funds described in the **Exhibit E** (the "**Milestones**"). Accordingly, time is of the essence in the performance of this Agreement. Developer shall diligently proceed to completion of the Project, shall adhere to the Project

Schedule set forth in **Exhibit B**, and shall meet all deadlines set forth in the Project Schedule and the milestones set forth in **Exhibit E**. The Developer and the BHA, respectively, shall adhere to their respective obligations herein and shall meet all as applicable deadlines. The Developer and the BHA shall diligently proceed with their respective Work necessary to meet the Project Schedule and the Milestones.

**2.04 A Detailed Description of Project and Design Standards.** A detailed description of the Project is at **Exhibit I**. The Developer is required to engage in an integrated design process with BHA, residents, and other BHA-identified partners. This is relevant for all aspects of the design process but is particularly relevant for the inclusion of criteria embodied in the LEED and Energy Star certification programs, requirements under Article 37 of the Boston Zoning Code, and health initiatives incorporated in the Building Guidance for Healthy Homes developed by the Asthma Regional Council. As part of the integrated design process, the Developer must evaluate design alternative from a full life-cycle cost perspective rather than just a development budget perspective as well as other contributing factors. Finally, BHA must approve any exceptions proposed by the Developer to the City of Boston Department of Neighborhood Development's Design, Construction, and Open Space Unit Residential Design Standards.

**2.05 Obligation to Develop.** Developer shall ensure that: (a) all goals identified in the Governing Documents are accomplished through specific activities and programs, including, but not limited to, all Resident Employment Requirements/goals; (b) all such activities and programs are assigned to specific individuals and/or teams on Developer's staff, or through contracts or subcontracts; (c) adequate funding sources are identified and applications are submitted for sufficient funds are budgeted to accomplish all activities and programs; and (d) all material obligations imposed by the Governing Documents are met (provided, however, that Developer shall have no responsibility for obligations which are within the sole control of the BHA to meet or which are expressly reserved exclusively to the BHA by this Agreement). Developer shall solicit and consider, in good faith, all input of the BHA in the performance of Developer's obligations under this Agreement (e.g., inviting the BHA staff to participate on teams working on various aspects of the Project, or otherwise soliciting from the BHA comments and suggestions in regard to Developer's obligations).

### **ARTICLE 3. GENERAL PROVISIONS AND CONDITIONS**

#### **3.01. Submissions by Developer.**

**3.01.1.** Within ten (10) business days following the receipt by Developer of each of the following, Developer shall deliver to the BHA: all copies of all plans, drawings, reports and manuals prepared or obtained by Developer and/or its respective agents, contractors and subcontractors in connection with the planning, design, development, construction and operation of its respective portions of the Project (all of which shall be subject to the prior approval of the BHA, which approval will not be unreasonably withheld, delayed or conditioned).



**3.01.2.** Within ten (10) business days following the receipt by Developer of each of the following, Developer shall deliver to the BHA: all governmental agency or other notices concerning the Project or Property, or any portion thereof.

**3.01.3.** Within two (2) business days following the receipt by Developer of each of the following, Developer shall deliver to the BHA: all written complaints in any actions or arbitrations or investigatory proceedings to which Developer is a Party or which may affect the Property, the Project or the performance by either Party under this Agreement, together with a detailed narrative of the Developer's proposed response to, and method for addressing, all issues raised, directly or indirectly, in such complaints, arbitrations and/or proceedings.

**3.01.4.** At least ten (10) business days prior to the entry into this Agreement by Developer and the BHA, Developer shall deliver to the BHA: such financial reports and statements of Developer that are requested by the BHA. In the event, during the term of this Agreement, the financial information provided in such financial reports and statements materially decreases, Developer shall notify the BHA in writing within three (3) business days following such material reduction.

**3.01.5.** Within two (2) business days following the receipt by Developer, Developer shall deliver to the BHA written notice of: any default or of any circumstance which with the giving of notice or passage of time would constitute a default under any Governing Document to which it is a Party that is material, as reasonably determined by the BHA.

**3.01.6.** In each calendar quarter, following the calendar quarter ending on [INSERT DATE] (i.e., calendar quarter covering three months), and continuing thereafter following each subsequent calendar quarter until the Project is closed out by BHA, Developer shall deliver to the BHA, no later than the fifth (5<sup>th</sup>) day following the end of the preceding calendar quarter (i.e., in the example shown above, by the fifth (5<sup>th</sup>) day of January) all financial information required for quarterly reports, including Certified Payroll Reporting Requirements, and no later than the tenth (10<sup>th</sup>) day following the end of the preceding calendar quarter, all documentation showing compliance with all MBE/WBE requirements, the Resident Employment Requirements, which may be required under the Governing Documents, and additionally, Developer shall submit to the BHA all information that BHA may otherwise request.

**3.01.7.** Developer shall deliver to the BHA: copies of all proposed submissions to public entities and other third Parties, and all offering materials prepared in connection with the development of the Project including, but not limited to, any and all offerings or financial structures of the LIHTC submissions, for the prior written approval of the BHA, at least five (5) business days prior to the date upon which the Developer or the BHA must make such submissions to the public entities and other third Parties.

**3.02. Inspection by the BHA.** The BHA and its Administrator, employees, agents, licensees and HUD may visit or inspect the Project and inspect all plans, specifications, reports, books and records of Developer and its agents, employees, contractors and subcontractors relating in any way to the Project during normal business

hours. Any such visits shall be conducted in a manner that does not cause unreasonable interference with Developer's operations. Developer may require any person at the Project to comply with its reasonable rules and regulations.

**3.03. Permits.** At all times during the term of this Agreement, Developer shall obtain and maintain any and all Permits (as defined below in **Section 5.04**) necessary to fulfill its obligations under this Agreement. Developer shall provide the BHA with copies of the applications for all such Permits on or before the date on which they are filed with or submitted to the appropriate agency. Following the approval or issuance by the appropriate agency of each such Permit, a copy of such Permit shall be delivered by Developer to the BHA.

**3.04. Protection of Persons and Property.** Developer shall take reasonable precautions for the safety of and shall provide reasonable protection to prevent damage, injury or loss to: (i) employees of Developer, the BHA, contractors and subcontractors at the Project and other persons who may be affected thereby; and (ii) the Work and materials and equipment to be incorporated therein, whether in storage on-site or off-site, under care, custody or control of Developer or its agents, employees, contractors or subcontractors. At the request of the BHA, Developer shall provide fencing for the Property and/or a night security guard for the Property or any other reasonable safety/security measures. All costs, fees and expenses incurred by the Developer in performing the obligations under this **Section 3.04** shall be included in each Budget, with no obligation imposed upon the BHA to pay or otherwise be responsible for the expense or performance of such obligations.

**3.05. Agreements as to Compensation related to the Development Fee.** The Parties agree that the Governing Documents shall be consistent with the following terms, subject to the financial requirements of the debt and equity sources for each (so long as such financial requirements result in a lesser sum due to Developer as development compensation). In the event there is any conflict between or within any Governing Documents, such conflict shall be resolved in accordance with the provisions of **Section 16.07**. The development fee for which the Developer is eligible to be paid under this Agreement shall be stated in monetary amounts in the Rental Term Sheet for the Project.

(a) Of the development fee compensation to be paid to Developer, [\$\_\_\_ or \_\_\_%] shall be applied to cover Developer's overhead costs in managing the Project, and [\$\_\_\_ or \_\_\_%] shall be paid by Developer to the BHA to cover its overhead costs in managing the Project.

(b) The Developer may be paid an annual asset management fee from cash flow of the Project in an amount to be agreed to in the Closing Documents.

(c) The BHA shall be paid an annual asset management fee from cash flow of the Project in an amount agreed to in the Closing Documents.

(d) All funds received by Developer or any other entity related to the development fee referred to in this **Section 3.05** shall not be funded by any BHA or HUD funds.

**3.06. HUD Requirements.** The Developer and the Project shall be subject to all HUD requirements, including without limitation the following:

(a) **HUD Guidelines.** To the extent applicable, and notwithstanding anything to the contrary set forth elsewhere in this Agreement or any other Governing Document, or in the event a required business concept is not addressed within the text of this Agreement or any other Governing Document (e.g., the definition of “**Development Compensation**” as a percentage (%) of the Project Budget and/or the definition of “**Project Cost**”), all of the benefits, rights, entitlements, obligations, responsibilities and liabilities of Developer, the BHA, the duly-recognized tenant organization and any other Party to the Governing Documents (collectively, “**Affected Entities**”), as well as all other provisions of this Agreement and the Governing Documents are expressly subject to and shall be governed by the terms and provisions of that certain Memorandum by HUD, entitled “**Cost Control and Safe Harbor Standards for Rental Mixed-Finance Development**” issued by HUD on February 29, 2000, as reissued by HUD on January 2, 2002, and as reissued by HUD on April 9, 2003, a copy of which is attached to the BHA RFP at Exhibit I (the “**HUD Guidelines**”). In addition, in the event this Agreement or a Governing Document fails to address any business concept, as referred to above, such business concept, if addressed in the HUD Guidelines, shall have the meaning set forth in the HUD Guidelines. In the event there is any conflict or ambiguity between or among the terms, covenants and provisions of this Agreement or a Governing Document, and the terms, covenants and provisions of the HUD Guidelines, the terms, covenants and provisions of the HUD Guidelines shall control in each instance. The Parties mutually acknowledge to each other that there may be provisions in this Agreement or a Governing Document which conflict or create ambiguities with regard to the HUD Guidelines. Developer and BHA mutually acknowledge that each has had an opportunity to review the HUD Guidelines and is familiar with the terms, covenants and provisions thereof.

(b) The HAP.

#### **ARTICLE 4. PROJECT SCHEDULE**

**4.01. Developer Obligation.** Developer shall undertake and complete the Work or any scheduled requirement in accordance with each of the deadlines set out in the Project Schedule and the Milestones. Developer’s failure to comply with this **Article 4** and to complete each requirement in accordance with the applicable deadline set forth in the Project Schedule, subject to any amendments to such Project Schedule as mutually agreed to by the parties, to which agreement shall not be unreasonably withheld, conditioned, or delayed, or Milestone shall constitute a default under **Article 12**.

**4.02. Completion.** The BHA shall determine that Developer has completed a requirement of the Project Schedule at such time that all submissions and actions relative to such requirement have been accomplished to the reasonable satisfaction of the BHA. Upon completion of any requirement of the Project Schedule, and at the request of Developer, the BHA promptly shall issue a written acknowledgement of completion with respect to such requirement.

## **ARTICLE 5. DESIGN, PLANS, SPECIFICATIONS, AND GENERAL OBLIGATIONS OF DEVELOPER.**

**5.01. Compliance with Laws and Permits.** Developer shall undertake the Project in compliance with all applicable federal, state and local laws, codes, ordinances, rules and regulations (“**Laws**”) and with all Permits.

**5.02. Design, Plans, and Specifications.** Developer shall submit for approval by the BHA, conceptual plans, design plans, construction drawings, construction plans and specifications and contracts for the construction and equipment of the Project, including but not limited to fifty percent (50%) and one hundred percent (100%) completed construction plans, specifications and contract documents, in accordance with the Project Schedule and Milestones. The BHA shall promptly review and determine whether to approve all such submissions, which approval shall not be deemed review or approval for purposes of compliance with the policies or requirements of governmental agencies, or any Laws or Permits. All such reviews and approvals made by the BHA with respect to such submissions by Developer shall be for the sole benefit of the BHA and for any purposes for which the BHA intends. The BHA shall be entitled to make reasonable requests for additional information or modifications based upon BHA’s review. In the event of disapproval by the BHA of any of the foregoing, or requests for modifications or additional information, Developer shall promptly resubmit reasonable revisions or such additional requested information to the BHA. The submissions approved by the BHA as final shall constitute the approved plans (the “**Approved Plans**”). The BHA and Developer shall assemble not less than two complete sets of Approved Plans to be initialed by the BHA and Developer and retained by the BHA for identification.

**5.03. Documents, Drawings, and Materials.** Developer shall furnish the BHA one (1) reproduction of final drawings of record and data sheets, including electronic copy of drawings in Auto Cad, an as-built survey, results of civil, structural and hydraulic design calculations; loading diagrams, equipment manufacturers’ drawings and data, including construction data and parts lists and final specifications.

**5.04. Obtaining Permits.** Developer shall be responsible for obtaining in a timely manner all necessary or desirable permits, certificates, approvals, variances, licenses and other governmental or quasi-governmental approvals and permissions for the design, construction and use of the Project, at Developer’s sole cost and expense (“**Permits**”).

**5.05. Inspection Not Deemed Acceptance of Performance.** Any inspection by the BHA or its contractors, employees, agents and representatives shall not be deemed an acceptance by the BHA of all or any of the Work, equipment or materials.

**5.06. Syndication.** Developer shall undertake responsibility in regard to applications and syndications of any LIHTCs and be responsible for the tax and financial structuring of the syndication offerings, prepare detailed financial projections and prepare preliminary offering documents. The BHA shall review, comment and approve the LIHTC applications, the tax and financial structures of the syndication offerings, as well as financial projections in the preliminary offering documents. There shall be no syndication

fee paid to Developer or any affiliate of Developer, and all funds generated from the marketing of the LIHTCs to an investor, in excess of the raise-up necessary to fund the Project Budget, as attached hereto as **Exhibit C** shall be used by the BHA and the Developer for the Project, in a manner which is mutually agreeable to each (e.g., benefits for the residents intended to occupy the Project, or reduction in the amount of public housing funds to be otherwise provided by the BHA to fund the Project, or to provide amenities to the Project which would not otherwise be covered by the applicable Budget, or any other type of benefit mutually agreed upon by the BHA and the Developer). Developer shall disclose to the BHA all direct and indirect relationships which Developer or any of its affiliates has with the investors solicited in regard to the LIHTCs as well as the amounts of any funds, fees, sums, reimbursements or other moneys (regardless of characterization) received or to be received directly or indirectly by Developer or its affiliates in regard to each syndication transaction with regard to the Project. Developer and the BHA will mutually (a) review and comment on all equity investor responses/proposals; (b) consult with one another on the selection of the equity investor, and (c) select the final investor. In connection with the syndication, Developer shall provide for any customary completion, tax credit adjuster and limited operating deficit guarantees required by the investor. All of the Developer's obligations and responsibilities in regard to applications and syndications of any LIHTCs and responsibilities for the tax and financing structuring of the syndication offerings, including the preparation of detailed financial projections and preparation of preliminary offering documents, and the selection of the final investor must be completed by Developer within any applicable Milestones set forth in **Exhibit E**.

Developer shall undertake the responsibility for the preparation, negotiation and finalization of all Owner-Entity organizational documents. All such Owner-Entity organizational documents shall be subject to the review and approval of the BHA, which approval will not be unreasonably withheld, conditioned or delayed by BHA.

**5.07. Additional Provisions of Owner Entity Organizational Documents.**

Each Owner Entity organizational documents shall include the following provisions:

(a) **Right of First Refusal.** The Owner Entity will not sell its property, and each member or partner of the Owner Entity will not sell its respective interests in the Owner Entity, to any person after the compliance period (i.e., "pursuant to Section 42(i) of the Internal Revenue Code ("**Code**"), the Compliance Period means, with respect to any building, the period of 15 taxable years beginning with the 1<sup>st</sup> taxable year of the Low Income Housing Tax Credit period with respect thereto") ("**Compliance Period**"), without providing a right of first refusal (the "**Right of First Refusal**") in regard to the same to the BHA or any of the BHA's affiliates or designees. The aggregate price to be paid by the BHA for such property or interests shall be equal to the minimum amount required to be paid under Section 42(i)(7)(B) of the Code.

(b) **Option to Purchase.** The Owner Entity will provide the BHA or the BHA's affiliate or designee, subject to the Right of First Refusal provisions of **subsection 5.07(a)** above, with an option to purchase after the Compliance Period, either the Owner Entity property, or all of the interests in Owner Entity. The aggregate price to be paid by the



transferee shall be equal to the fair market value of such property or interests unless Section 42 of the Code is amended to permit the purchase price of the option to be the same as the purchase price under the right of first refusal, in which case the purchase price for the option shall be the same as the purchase price under the right of first refusal.

(c) **Approval of Purchaser.** In addition to the rights given the BHA pursuant to clauses (a) and (b) above, the Owner Entity will not sell the Owner Entity property, and the members or partners of the Owner Entity will not sell their respective interests in Owner Entity to any person without the prior written consent of the BHA to the identity of such purchaser. Notwithstanding the foregoing, BHA consent is not required for any transfers of investor limited partnership interests after the final investor capital contribution required by such Owner Entity's limited partnership agreement, provided the Owner Entity and investor limited partner provide BHA with a contemporaneous written notice of such transfer.

(d) **Venue.** All documents entered into by the BHA and any Third Party, including the Owner Entity in connection with, but not limited to, the ground lease, loan documents, the Governing Documents, etc. shall contain a provision to the effect that: any action or proceeding arising thereunder shall be brought in the courts of Massachusetts; provided, however, that if any such action or proceeding arises under the Constitution, laws or treaties of the United States of America, or if there is a diversity of citizenship between the Parties thereto, or any other causes establishing federal jurisdiction, so that it is to or may be brought in the United States District Court, it shall be brought in a United States District Court having jurisdiction for Massachusetts.

**5.08. Construction Completion Guaranty.** (a) At the Closing of the transactions contemplated under this Agreement, Developer shall provide for the benefit of the BHA unconditional construction completion guaranties, in the form attached hereto as **Exhibit D** (each, a "**Construction Completion Guaranty**") of the construction of the Project within the time frame required by the Project Schedule and Milestones, subject to extensions that are agreeable to the Parties, and within its applicable approved Project Budget, subject to increases thereof mutually agreeable to the Parties. The Construction Completion Guaranty shall expire and be of no further force or effect upon the first (1<sup>st</sup>) annual anniversary date of the date of the issuance of an unconditional Certificate of Occupancy for the Project by the City of Boston Inspectional Services Department, except as to any claim made thereunder prior to that date. The Construction Completion Guaranty shall be delivered to the BHA at Closing for the Project, and constitute a Closing Document thereafter.

**5.09. Milestones.** Developer's performance of its obligations, responsibilities, liabilities and undertakings under this Agreement shall be measured in accordance with performance milestones to be mutually agreed upon by the Parties and attached hereto as **Exhibit E** (the "**Milestones**"), subject to the provisions of Section 5.06 above.

**5.10. Developer's Other Obligations.** Developer shall perform its obligations, responsibilities, liabilities and undertakings under this Agreement in a manner which does not conflict with any of the Governing Documents.

**5.11. Management of Rental Units.** Ninety (90) days prior to the projected date for financial closing and conveyance pursuant to the Project Schedule, Developer shall deliver to the BHA, in a detailed, written narrative form, the proposed contractual relationship for management of the rental units between the Owner Entity and the management company (the “**Management Company**”) and a form of the proposed management contract between such entities (the “**Management Contract**”). Attached to the Management Contract and made a part thereof shall be the Management Plan, which Management Plan shall have attached as exhibits thereto and made a part thereof, the residential tenant lease form and all other management-related documents requested by the BHA to be attached thereto. The Management Contract will provide that the BHA, and their respective agents and designees, upon request, be provided access to all books and records maintained by the Management Company in relation to or affecting the Management Contract and/or the Project being managed by the Management Company and/or any of the Management Company’s activities as the manager for the Project as necessary in connection with the costs, expenses or income connected with the Project for review, copying, and auditing at all reasonable times. The Management Contract and the Management Plan are subject to the approval of the BHA.

If the Management Company materially violates, breaches or fails to comply with any provision of, or obligation under, the Management Contract, the BHA shall have the option to require the Owner Entity to terminate the Management Contract, and appoint a successor manager thereunder, subject to the notice and cure provisions, if any, provided in the Management Contract and subject to the approval of the investor limited partner in the applicable Owner Entity.

**5.12. Community Facilities and Amenities.** To the extent the Governing Documents contemplate that the Project will include any community facilities, Developer shall be responsible for the design, construction, operation, and management of such community facility, unless directed otherwise in writing by the BHA. Moreover, Developer agrees to provide certain amenities to the housing units, such as air-conditioning to each of the housing units, on-site security, and parking. Developer acknowledges that Section 42 of the Code places restrictions on parking fees. Developer will explore making such parking and parking fees optional.

**5.13. Press Releases.** Developer hereby acknowledges and agrees that the BHA is a public body, and as a result is subject to certain requirements of law related to the release and disclosure of certain records and information in its possession, including, among other things, this Agreement, and related documents and information, upon the written request of others. Notwithstanding the foregoing, and to the extent reasonably practicable, Developer and the BHA agree to advise each other at least forty-eight (48) hours in advance of making any notification or issuing any press release or other public statement with respect to any aspect of the Project, the Site Investigations (as defined hereafter), or any related activities, or the contemplated development by Developer of the Property, and to the extent the same is also reasonably practicable, to incorporate the reasonable comments of the other in any such communication. The BHA and Developer also agree to cooperate and to allow each other to participate in any public hearing, meeting, or other event relating to such matters during the term of this Agreement, including any extensions thereof.

**5.14. Staffing.** Developer agrees that the personnel referred to in this **Section 5.14**, and who were also identified by Developer to the BHA in the Proposal pursuant to which the Developer was selected by the BHA to develop the Project, constitute the members of the Developer's development team, who are required to devote a significant time commitment to the implementation by the Developer of the Project and performance of the Developer's undertakings herein (the "**Development Team Members' Commitments**"). Developer agrees that the following team members shall make a significant time commitment to the Project: [INSERT NAMES].

**5.15. Support of Resident Participation.** The Developer shall support resident participation and shall ensure that the Project shall fund the resident organization of the Project in an amount equal to what the BHA would provide as funding if the units in the Project were public housing units. The Project shall be subject to a Memorandum of Agreement for Resident Participation in Boston Housing Authority-Affiliated Mixed Finance Developments among the BHA, the Owner Entity, and the resident organization, in a form attached hereto at **Exhibit J**.

## **ARTICLE 6. AUTHORIZATION TO PROCEED TO CONSTRUCTION**

**6.01. Authorization to Proceed.** Upon the satisfactory completion of the following, with respect to each Phase of the Project, the BHA shall deliver written notice authorizing Developer to proceed to construct such Phase of the Project ("**Authorization to Proceed**"):

**6.01.1.** completion of the Approved Plans; and

**6.01.2.** issuance of a building permit by the City of Boston Inspectional Services Department; and

**6.01.3.** completion of the closing of the construction loan and equity financing.

Upon mutual agreement of the Parties, Developer shall be authorized to commence the demolition of existing improvements, if applicable, on a Phase by Phase basis, upon (1) completion of demolition plans for the buildings and units within the Phase to be demolished, (2) completion of the design development plans and the accompanying cost estimate for such Phase, and (3) the issuance of a demolition permit for such Phase, provided, however, each of the foregoing has been approved in writing by the BHA.

**6.02. Effect of Authorization to Proceed.** Developer shall promptly commence construction of each Phase of the Project upon its receipt of the Authorization to Proceed for such Phase.

## **ARTICLE 7. CONSTRUCTION**

**7.01. Materials, Equipment, and Related Services.** Except for such items specifically agreed to be provided by the BHA pursuant to the Governing Documents, Developer, acting as an independent contractor and not as agent for the BHA, shall perform or cause to be performed and supply or cause to be supplied at its own expense, whether



by producing itself or by procuring from others all labor, materials, equipment, supplies and services required for the completion of the Project and performance of its obligations under the Governing Documents. All labor, equipment, materials and articles purchased by Developer shall be new or comparable recycled and of the most suitable grade of their respective kinds for the purpose, and all workmanship shall be first-class. Developer shall handle and warehouse or otherwise provide appropriate storage for materials, supplies and equipment for permanent and temporary construction and handle all soil, gravel and similar materials or disposal thereof as required by Law.

**7.02. Environmental Remediation.** Developer agrees that, by the execution of this Agreement, the Developer releases the BHA of any claims the Developer may have against the BHA pursuant to Massachusetts General Laws Chapter 21E (“**Chapter 21E**”) and/or the Massachusetts Contingency Plan, 310 C.M.R. 40,000 et seq. (the “**MCP**”) with respect to the Property. The Developer further acknowledges and agrees that in consideration of the rights and benefits granted to Developer under this Agreement, Developer is solely responsible for carrying out in accordance with the requirements of Chapter 21E and the MCP any remediation required pursuant to Chapter 21E and/or the MCP of the Property, at Developer’s sole cost and expense, without recourse to the BHA, and subject to the indemnification obligations set forth in **Section 9.06** of this Agreement. In regard to any environmental testing, audits or investigations performed by Developer, in the event the Developer becomes aware of the necessity of any remediation of the Property under the Chapter 21E and/or the MCP, then Developer shall notify the BHA in writing within 3 days following the Developer’s knowledge thereof. Any and all activities undertaken by Developer with respect to environmental testing, auditing or other investigatory procedures shall only be undertaken by Developer after the prior written approval of BHA.

**7.03. Construction and Related Matters.**

(a) **Exclusive Responsibility.** Developer shall have exclusive responsibility for construction methods, means, techniques and procedures and for the establishment of and compliance with safety procedures with respect to the Project; provided, however, the BHA shall have the right to review and monitor any such methods, means, techniques or procedures, but shall have no responsibility for the same. Notwithstanding the foregoing, the BHA shall have the right to comment reasonably on the Developer’s construction methods, means, techniques and procedures, which comments shall be implemented by the Developer. In connection with the foregoing, the BHA shall comment on the Developer’s construction methods, means, techniques and procedures within fifteen (15) days following the BHA’s receipt from the Developer as to what the Developer’s constructions methods, means, techniques and procedures are. Nothing in this provision, or any other provision of this Agreement, is intended, nor shall be construed, to impact negatively on or otherwise alter the fact that the Developer is a third-Party contractor and not the agent of the BHA.

(b) **Public Infrastructure.** The BHA and Developer shall, through a collaborative process, determine proposed public infrastructure improvements necessary to support the development of the Project and the Developer shall seek appropriate public and/or private financing to fund such improvements. Developer shall be responsible to

coordinate the design, engineering, implementation and close out of infrastructure, and such responsibility shall be covered by Developer overhead, and included in development compensation to be paid to Developer.

(c) **Drawings and Documents.** The Developer hereby assigns to the BHA and grants to the BHA a security interest in all of the Developer's right, title and interest in to and under the following in regard to the Project (collectively, the "**Project Documents**"): (a) all architectural work products, engineering work products, and plans, specifications, drawings and reports, including copyrights related to the foregoing, surveys, plats, permits, including the Permits, and the like, contracts for design, construction, operation and maintenance of, or provision for services to the Project, including all works in progress in connection with the foregoing, and all rights, technology, agreements, licenses and documents of a similar or dissimilar nature; (b) all sewer taps and allocations, agreement for utilities, bonds, letters of credit and the like, relating directly or indirectly, wholly or in part; (c) design, marketing and construction concepts ; (d) work products and other deliverables acquired by Developer with proceeds of any portion of the financing, and (e) all data, draft reports and final reports prepared by, or on behalf of, Developer during Developer's performance of all site investigations prior to the Developer's entry into this Agreement (collectively, the "**Site Investigations**"). Developer hereby warrants, represents and covenants with the BHA that copies of all of the items referred to in clause (e) above were provided promptly upon Developer's receipt thereof to the BHA, and the BHA had an opportunity to comment upon all such data and reports within fifteen (15) business days following the BHA's receipt of such data and reports. Developer shall deliver a copy of all Project Documents within seven (7) days of BHA's request.

(i) **Prompt Assertion.** During the continuance of any event of default of Developer under this Agreement, beyond any applicable cure period, and/or a termination by the BHA of this Agreement, BHA may, at its option, without notice, either in person or by agent, with or without bringing any action or proceeding at any time hereafter, enforce for its own benefit its rights under this subsection 7.03(c).

(ii) **Contractor's Agreements.** Each contractor, including the Contractor and engineer and architect engaged or procured by Developer, upon written notice from BHA of the continuance of any event of default by Developer hereunder beyond the applicable notice and cure period under this Agreement or any other applicable agreements between Developer or an Owner Entity and the BHA, is hereby authorized by Developer to perform their respective Project Document(s), for the sole benefit of BHA in accordance with the terms and conditions thereof without any obligation to determine whether or not such an event of default has in fact occurred and continues.

(iii) **Representations.** Developer hereby covenants and represents to BHA that: (1) Developer has not previously assigned, sold, pledged, transferred, hypothecated or otherwise encumbered the Project Documents or any of them or its right, title and interest therein; (2) Developer will not assign, sell pledge, transfer, hypothecate or otherwise encumber its interests in the Project Documents or any of them, except in connection with approved financing; (3) Developer has not performed any act

which might prevent Developer from performing its undertakings hereunder or which might prevent BHA from operating under or enforcing any of the terms and conditions hereof or which would limit BHA in such operations or enforcement; (4) Developer is not in default under any of the Project Documents, and to the best knowledge of Developer at the time of enforcement by the BHA of its rights under this **Section 7.03**, no other Party to the respective Project Document(s) is in default thereunder, and (5) upon execution of any of the Project Documents, Developer will deliver a true and complete copy of such Project Document(s) (or the original at BHA's request) to BHA and will require the Parties thereto, as BHA may designate, to execute and deliver to BHA a consent to the provisions of this Section 7.03 on the form attached hereto as **Exhibit G**, or any other form reasonably required by the BHA. Upon a Closing for each Phase of the Project, the Owner Entity shall make the representations set forth in this **subsection 7.03(c)(iii)**.

(d) **Construction Contract Requirements.** Each construction contract shall require the general contractor, including the Contractor, to provide for the benefit of BHA, and Developer, at a minimum, (1) insurance as provided hereunder, (2) lien, performance, and payment bonds satisfactory to all lenders, including the BHA; (3) a warranty of good title to materials, equipment and supplies incorporated in the Work; (4) a warranty that the Work performed under the construction contract conforms with the construction documents, the Approved Plans and is free of any defect in equipment, material or workmanship performed by the general contractor or any subcontractor or supplier in any tier; (5) a warranty that all material, equipment and supplies are new or comparable recycled, of first quality and suitable for the purposes for which they are used; and (6) an addendum to be provided by the BHA containing employment goals, procurement requirements, and other governmental requirements. These warranties shall expire in regard to a Third-Party claim, unless a claim is made thereunder on or prior to the 1st annual anniversary date of the date upon which the appropriate governmental or quasi-governmental agency issued a final and unconditional certificate of occupancy for the Project.

**7.04. Punch List Items.** Prior to the construction completion deadline as set forth in the Project Schedule, the BHA, at its sole cost, and Developer, at its sole cost, shall conduct an inspection of the Project and Developer shall promptly prepare and deliver to the BHA for its review, comment and approval a list of Work needed to complete the Project and to repair or replace any defects or deficiencies in the Project which in the reasonable judgment of the BHA must be remedied to achieve the Construction Completion Milestone (the "**Punch List Items**").

**7.05. Materials Inspection.** Developer shall have the responsibility for inspecting all materials and equipment incorporated into the Project or used in performance of the Governing Documents, in order to satisfy Developer and the BHA that all of the foregoing are consistent with the requirements of this Agreement, including the Approved Plans.

**7.06. Property Inspection.** The BHA shall have the right to keep upon the Property employees, agents, representatives and contractors, and Developer shall give such

employees, agents, representatives and contractors and the BHA access to the Property and access to the Work in progress, in order that the BHA may at all times be fully advised of the progress of the construction and the manner in which the Work is being performed, provided, however, that any such employees, agents or representatives and the BHA shall not unreasonably interfere with the performance of the Work.

**7.07. No Changes.** Developer shall construct the Project strictly in conformance with the Governing Documents and with the Approved Plans, without deviation or change, except as provided in the Governing Documents and any change order approved by the BHA.

**7.08. Contractors.** Each construction contract entered into by Developer or any Owner Entity shall be at a price that does not exceed that which would be incurred by a prudent person in the conduct of a competitive business and shall be within the scope of the applicable Project Budget. Developer shall conduct a cost reasonableness analysis with respect to each such contract. Each construction contract shall be subject to BHA review and comment, shall be on an AIA contract form for a Cost, Plus Fee, subject to a Guaranteed Maximum Price, and shall include, at a minimum, the following:

- (a) If required by funding requirements, the Developer and/or Owner, as applicable, shall require that all contractors, and subcontractors execute an original document in the form of **Exhibit F** to this Development Agreement (“**Subgrantee/Contractor/Subcontractor Certifications and Assurances**”) at the time the Developer and/or Owner executes any contract with any contractor or subcontractor, and at the time any contractor executes any contract with any subcontractor, to provide goods or services under or pursuant to this Agreement. The Developer and/or Owner shall retain the executed original certification together with the executed contract documents and forward copies of same to the BHA.
- (b) If required by funding requirements, the Developer and/or Owner, as applicable, shall ensure that the requirements contained in any General Conditions for Construction Form are included in any solicitation for bids related to a construction contractor that will be made by and paid for with assistance under this Agreement. Such conditions must also be included in any construction contract entered into by the Developer and/or Owner. If a construction contract is solicited by the Developer and/or Owner, HUD Form 5370 or equivalent form is suggested, but not required. The Developer and/or Owner may use any General Conditions form that has been approved by the American Institute of Architects.
- (c) If required by funding requirements, the Developer and/or Owner shall ensure that the requirements contained in any General Conditions for Non-Construction Form are included in any

solicitation in connection with non-construction contracts that will be made by and paid for with assistance under this Agreement. Such conditions shall also be included in any non-construction contract entered into by the Developer and/or Owner.

- (d) Pursuant to home rule legislation, the construction contracts with respect to the Project are exempt from provisions of Mass. General Laws Chapter 149 § 44A thru J (except for provisions of §§26-27H inclusive), and the following provisions shall apply subject in all respects to the HUD Guidelines to the extent applicable: In the event there is any cost savings under the general construction contract, such cost savings shall (A) not be funded by any BHA or HUD funding or other public housing capital funds, and (B) be allocated as follows: (i) to the General Contractor up to \_\_\_\_\_% thereof (“GC/CS Amount”), provided, however, when the GC/CS Amount is added to the General Contractor’s overhead, general conditions and profit percentages under the general construction contract, the sum does not exceed 14% of the hard construction costs, as set forth in the HUD Guidelines, and (ii) to the Owner Entity all of the remaining cost savings but, in no event, less than \_\_\_\_\_% thereof. The portion of the cost savings received by the Owner Entity shall be used by the Owner Entity solely for purposes to benefit the Project in a manner mutually agreed upon by the Owner Entity and the BHA. The Parties acknowledge and agree that no cost savings may come from funding provided by BHA, if any. Developer shall obtain a minimum of three (3) competitive bids for the general construction contract for the Work, or any part thereof, and the general contractor shall obtain a minimum of three (3) sub bids for each trade for which filed sub bids would be required if the Work were bid subject to Massachusetts General Laws Ch. 149. Developer shall assure that the general construction contractor shall maintain open books on all submissions and pricing. Each general construction contract and/or subcontract agreement shall preserve and protect the rights of the BHA under the applicable terms of the Governing Documents. All such general construction contracts shall be subject to the review and approval of the BHA which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding such review and approval, the BHA shall not be deemed to be a Party to any such general or subcontract construction contracts. Each such general and subcontractor construction contract entered into by Developer or Owner Entity shall limit payment to the contractor or subcontractor for general conditions, overhead and profit in accordance with the HUD Guidelines to the extent applicable.

**7.09. Protection of Neighboring Community.** The Developer understands and acknowledges that the community, in which the Project is located, is an on-going



residential community and will continue to be so during the performance of this Agreement by Developer and that portions of the Mary Ellen McCormack public housing development will be occupied by public housing residents while pre-development and construction activities with respect to the Project are underway. Notwithstanding anything to the contrary in this Agreement, the Developer agrees to design and plan the development and construction activities hereunder with the highest degree of care so as to (a) permit the surrounding community to operate without material interference to any persons working or otherwise occupying or visiting its community, and (b) ensure the safety of persons and property thereon and adjacent thereto. The Developer shall take all measures necessary to ensure that the improvements on the perimeter of the Project shall not be damaged or disturbed. The Developer will use best efforts to avoid any disruption to any utility services to the existing community or to public housing residents occupying portions of the Mary Ellen McCormack public housing development resulting from the performance of its activities hereunder.

## **ARTICLE 8. TRANSFER OF INTEREST**

**8.01. Mortgage of Property by the Developer.** Notwithstanding any other provisions of this Agreement, if approved in accordance with the Governing Documents, and expressly approved in writing and in advance by the BHA, Developer shall at all times have the right to lien, encumber, pledge, or convey its leasehold or fee title interest (as applicable) in the Property, or any portion or portions thereof, in favor of the BHA, and/or an Institutional Lender(s) for loan(s) obtained by Developer to finance the Work, or to refinance any outstanding loan(s) therefor obtained by Developer for the benefit of the Project only. Developer shall give prior written notice to the BHA of its intent to exercise such rights hereunder, including in such notice the name(s) and address(es) of such mortgagee(s) and any other information regarding the mortgagee(s) and mortgage documents which the BHA may require. Without the prior written consent of the BHA, Developer shall not place a lien or other encumbrance on the Property, nor pledge the Property as collateral for any debts or financing.

## **ARTICLE 9. GUARANTIES, WARRANTIES, AND INSURANCE**

**9.01. Warranties.** Developer or, if applicable, the Owner Entity, shall obtain from the general construction contractor of each Phase for the benefit of the BHA a warranty that such Phase, when completed, is free of all defects in workmanship and materials, which warranty shall expire if a claim is not made thereunder on or prior to the 1<sup>st</sup> annual anniversary date of the issuance of a final, unconditional certificate of occupancy for the subject Phase.

**9.02. Insurance.** Developer and or the Owner Entities, as applicable, shall during the term of this Agreement maintain the insurance and the payment, performance and lien bonds, and such other casualty and liability insurance as may be required by the Governing Documents, including not less than the following coverages and terms or such other coverages and terms as the BHA accepts and approves:

(a) Commercial general liability insurance applicable to the insurable Project for death, bodily injury, and personal injury in amounts of One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) general aggregate, and Two Million Dollars (\$2,000,000) products and completed operations aggregate (such products and completed operations coverage must be maintained in effect for at least two years post completion of the Project). The commercial general liability insurance shall include coverage for losses arising from underground explosion and collapse. Any or all of these requirements may be expanded in scope or increased in amount, as the case may be, from time to time to reflect changes in amounts of such insurance carried by owners of comparable properties in the City of Boston or as may be required by the BHA. The policy affording such coverage shall name the BHA and all other parties designated by the BHA as additional insureds.

(b) Commercial automobile liability insurance covering all owned or hired and non-owned automobiles for bodily injury and property damage in the amount of One Million Dollars (\$1,000,000) per accident. This requirement may be expanded in scope or increased in amount, as the case may be, from time to time to reflect changes in amounts of such insurance carried by owners of comparable properties in the City of Boston or as may be required by the BHA. The policy affording such coverage shall name the BHA and all other parties designated by the BHA as additional insureds.

(c) Workers' compensation insurance at the statutory limits and as required by law and employer's liability insurance in the amount of One Million (\$1,000,000) for bodily injury for each accident, One Million dollars (\$1,000,000) for bodily injury by disease for each employee, and One Million Dollars (\$1,000,000) for bodily injury by disease in the aggregate in respect of any work performed by Developer's employees, contractors, and subcontractors on or about the Property and/or the Project.

(d) Umbrella liability insurance in the amount of Ten Million Dollars (\$10,000,000) per occurrence, covering losses in excess of the primary commercial general liability, commercial automobile liability, and employer's liability coverages, or such other amount as may reasonably be required by the BHA. If part of a master program, subject to annual aggregate limits, the umbrella limit shall be on a per-location/project basis.

(e) "All risk" property insurance covering all risks of physical loss or damage to any completed buildings, structures or other property constructed, erected or installed in connection with the Project on a full replacement cost basis. Replacement cost values shall be determined annually by a method reasonably acceptable to the insurance company providing coverage, provided that the Owner Entity shall review the amount of such coverage annually and shall adjust the amount of such coverage to take into account inflation in the replacement cost of the Property. Coverage shall be provided for increased cost of construction, demolition and building ordinance exposures/requirements. Such insurance shall have attached thereto a clause making the loss under the all-risk property insurance payable to the BHA and Developer, jointly.

(f) Builder's risk insurance covering any construction projects commenced on the Project or in connection with the Project. Coverage shall be provided on a completed

value basis and cover the full insurable replacement cost thereof. Any applicable deductible shall be the Developer's sole responsibility.

(g) Flood insurance if at any time the Property is located in any federally designated "special hazard area" (including any area having special flood, mudslide and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary map or a Flood Insurance Rate Map published by the Federal Emergency Management Agency as Zone A, AO, A1-30, AE, A99, AH, V0, V1-30, VE, V, M or E) in an amount equal to the full replacement cost or the maximum amount then available under the National Flood Insurance Program.

(h) Developer shall:

(i) Require any contractor (or subcontractor thereof) or professional to carry commercial general liability, commercial automobile liability, workers compensation, and employer's liability coverages, limits, scope of coverage and other provisions as described above or such other coverages and terms as the BHA approves and accepts. Such commercial general liability and commercial automobile liability coverages shall name the Developer and BHA and other parties designated by BHA as additional insureds. Developer shall obtain and keep on file certificates of insurance that show that the contractor or subcontractor is so insured, and renewals thereof.

(ii) With respect to any architect, engineer, or other person or entity providing professional services to Developer and/or employed in connection with the Property and/or the Project, or in the construction of other improvements, require such subcontractor to carry professional liability (errors and omissions) insurance in the amount of One Million Dollars (\$1,000,000), or such other amount required by the BHA, covering acts, errors, or omissions committed in, or arising out of, the provision of services in connection with the Project. In addition, Developer shall require any architect or engineer providing services to Developer in connection with the Project or in the construction of other improvements to carry insurance for valuable papers and records computations, field notes, and other data pertinent to the Project or other construction in the amount of One Hundred Thousand Dollars (\$100,000), or such other amount required by the BHA. Developer shall obtain and keep on file certificates of insurance which show that the architect, engineer, or other such professional is so insured. Professional liability coverage inclusive of errors and omissions and valuable papers coverage shall remain in effect for a period of two years after completion of the Project or other construction. Developer shall obtain and keep on file certificates of insurance that show that the contractor or subcontractor is so insured, and renewals thereof.

(i) The minimum coverages stated in this **Section 9.02** shall be reviewed annually by the BHA and the Developer, and shall be increased at such review if the BHA determines such increase is necessary to reflect inflation or changes in the nature or degree of risks insured.



**9.03 Insurance Provisions.** Insurance maintained by the Developer and its contractors and subcontractors pursuant to the requirements of **Section 9.02** and the Governing Documents shall:

(a) be provided by standard policies, written by financially sound and responsible insurance companies rated at least A/VI or better in Best's Rating Guide, authorized to do business in Massachusetts, and otherwise acceptable to the BHA.

(b) contain terms providing that any loss covered by such insurance may be adjusted with the Developer and BHA, but shall be payable to the holder of any leasehold mortgage, who shall agree to receive and disburse all proceeds of such insurance.

(c) include a provision in each respective policy document stating that the insurer will waive all rights of recovery, under subrogation or otherwise, against the BHA, its affiliate corporation, and all other parties designated by the BHA.

**9.04 Additional Insurance Provisions.** The following provisions shall apply to required insurance coverages described above if commercially available:

(a) Developer shall give written notice of cancellation, non-renewal or material modification of any required coverages to the BHA immediately upon Developer's receipt of notification of such cancellation, non-renewal or material modification. For purposes of this **subsection 9.04(a)**, a "material" modification shall include, but not be limited to, any change in the dollar amount of coverage, the circumstances to which the coverage applies, any change in the BHA's or the BHA's designees' position as additional insured or loss payee and any change in the duration of the coverage.

(b) Developer shall deliver certificates of insurance evidencing the existence of all required coverages, together with all endorsements to such policies, as are required hereunder, including endorsements naming the BHA and the BHA's designees, as additional insured thereunder, where applicable prior to final execution of this Agreement. Upon replacement or renewal of any of the coverages required herein, the Developer shall provide the BHA with certificates of insurance evidencing continuance of such coverage concurrent with such replacement or renewal.

(c) Developer shall provide complete copies of all required insurance policies to the BHA upon request.

(d) In addition to notifying Developer's insurer(s) in accordance with each policy, Developer shall provide prompt written notice to BHA as soon as reasonably possible of any accident or loss relating to the Property, the Project, or any part thereof, likely to exceed Twenty-five Thousand Dollars (\$25,000) in 2016 inflation adjusted dollars.

(e) BHA's address for purposes of receiving insurance certificates, binders, or notices shall be as follows:

Boston Housing Authority  
Director of Risk Management  
52 Chauncy Street  
Boston, MA 02111

**9.05 Liens and Other Encumbrances.** Developer covenants and agrees to protect and keep free the Property and Project, and any and all interests and estates therein, and all improvements and materials now or hereafter placed thereon under the terms of this Agreement from any and all claims, liens, charges or encumbrances in the nature of mechanics', labor, or materialmen's liens or otherwise, arising out of or in connection with performance of Work by Developer or any subcontractor, supplier or other person furnishing services or materials hereunder. Developer shall obtain a lien bond for each Phase pursuant to MGL chapter 254, section 12 and record such bond at the Suffolk Registry of Deeds prior to the commencement of each Phase.

**9.06 Risk of Loss; Indemnification.** Developer shall be responsible for repair of any damages to or destruction of the Project if caused from and after the date on which Developer takes possession of any portion of the Project and commences construction, except for any such damage or destruction caused by the BHA, its employees or its agents. During any time that Developer is in possession of the Project site, Developer shall pay, and protect, indemnify and save harmless the BHA from and against any and all liabilities, losses, damages, costs, expenses (including all reasonable attorneys' fees and expenses of Developer and the BHA), causes of action, suits, claims, demands or judgments of any nature whatsoever (except for those that result from the acts or failures to act of the BHA) that may be imposed upon or incurred by or asserted against the BHA by reason of (i) any accident, injury to, or death of any person or any damage to property occurring to the Project or any part thereof (except as may result from the acts of the BHA), or (ii) any use, nonuse, condition or occupation of the Project, or any part thereof, or resulting from the condition thereof or of adjoining sidewalks, streets or ways, or (iii) any failure by Developer to perform or comply with any of the terms hereof or of any contracts, agreements or restrictions, statutes, laws, ordinances or regulations affecting the Project or any part thereof or the ownership, occupancy or use thereof.

**9.07 No Reliance.** Developer shall bear all risks associated with performance of its obligations under this Agreement. Except for representations expressly set forth in this Agreement, the BHA makes no representations and Developer may not rely upon any statement, whether written or oral, now or hereafter made by any officer, employee, agent or representative of the BHA, as to (a) the geotechnical, environmental or other conditions of the Property and Project, (b) the suitability of the Property for the Project, (c) the existence or suitability of on-Property or off-Property facilities, (d) the availability of governmental permits and approvals other than those issued by the BHA, (e) the practicality or capacity of plans and specifications heretofore or hereafter approved by the BHA to satisfy the performance requirements of the Governing Documents or governmental and quasi-governmental requirements, and/or (f) the Property and/or Project and the contemplated use thereof to comply with existing zoning requirements. Statements and information provided by the BHA in the RFP shall not constitute representations or warranties of the BHA and the incorporation by reference of the RFP or any Governing

Document shall not be construed to be the adoption of any statement made in the RFP or Governing Document as a representation of the BHA. The BHA hereby disclaims any statement or representation not consistent with this **Section 9.05**.

## **ARTICLE 10. BHA OBLIGATIONS**

**10.01. Cooperation by the BHA.** The BHA shall cooperate fully with Developer and provide all reasonable assistance to Developer in support of the Project (without cost to the BHA), including but not limited to the following:

**10.01.1.** Providing all necessary written information in its possession relating to the Project as expeditiously as possible for the orderly progress of the Project. The BHA will respond promptly to questions that may arise during the course of implementing the Project.

**10.01.2.** Providing assistance to Developer with state and local agencies, HUD, lenders, and other applicable Parties in obtaining all approvals required by the BHA and/or the Developer.

**10.01.3.** The BHA shall use best efforts to respond to requests for approvals of Developer's submissions to the BHA within such time periods as will permit Developer to meet the Project Schedule and Milestones related to such submission; and provided further, however, such submissions are delivered to the BHA within a time frame that will provide the BHA with at least fifteen (15) business days to review and comment on any and all, direct or indirect, construction/related documents (e.g., drawings, plans and specifications, preliminary plans and specifications, design plans, surveys, plats, etc., and other documents which are determined by the BHA to be construction-related documents) in a businesslike and competent manner such submissions to meet such Project Schedule and Milestones. In addition, the BHA shall cooperate with Developer (without any obligation to provide funds in the event there is a short fall of funds needed to complete the Project, or there is otherwise a gap between the funds available to complete the Project and the funds necessary to complete the Project) in (i) obtaining the financing required for the Project, but Developer acknowledges and agrees that, to the extent the completion of the Project requires sums in excess of the approved construction budget, all such excess funds shall be the sole responsibility of, and paid by, Developer without reimbursement, and (ii) obtaining the Permits, including without limitation, permits and approvals from the Boston Redevelopment Authority, Boston Transportation Department, Boston Department of Public Works, and other agencies of the City of Boston, and the agencies of the Massachusetts Executive Office of Environmental Affairs. In no event, however, will the BHA be required to guaranty any such financing or otherwise be a Party to any such financings' Closing Documents or documents providing collateral for the repayment of the debt, or the performance of the obligations in such documents. Notwithstanding the foregoing, the BHA may request additional time to review any submission or requested revision thereof provided that such additional time shall not exceed an additional ten (10) business days.

**10.02. Site Control.** The Owner Entity regarding the Project shall obtain site control by way of a long-term ground lease to be entered into between the BHA or its affiliate, as the ground lessor, and the Owner Entity, as ground lessee, pursuant to which, among other things, the Project is constructed, used, maintained, etc. throughout the term of the long-term ground lease. The duration of the ground lease shall be ninety-nine (99) years. The ground lease shall be substantially in the form issued with the RFP.

**10.03. Intentionally omitted.**

**10.04. Provide Rental Subsidy to Eligible Units.** The BHA will make Project-Based Voucher subsidy available subject to availability of funding and subject to applicable HUD regulations.

**10.05. Execution of Documents.** The BHA shall maintain sole authority for the execution of documents required of BHA. Whenever statute or regulation requires the BHA to take actions or execute documents to accomplish the Project, the BHA will do so promptly so as not to impede the orderly progress of the Project. Such actions and documents shall be in a form and contain substance satisfactory to the BHA.

## **ARTICLE 11. DISPUTES**

**11.01. Performance by Developer Pending Resolution of Dispute.** In the event that there is a dispute between Developer and the BHA, Developer shall nevertheless proceed with performance of the Work under the Governing Documents, to the extent possible pending such resolution, and the BHA shall continue to reimburse Developer for its costs (provided neither such costs or Developer's performance hereunder or under the Governing Documents are the subject of the dispute) pursuant to this Agreement for Work conforming to the Approved Plans and contract documents and otherwise performed in accordance with the terms of this Agreement and the Governing Documents.

## **ARTICLE 12. TERMINATION FOR CAUSE/DEFAULT OF DEVELOPER**

**12.01. Events of Default.** The following shall constitute an Event of Default with respect to Developer under this Agreement:

**12.01.1.** refusal or failure of Developer to prosecute the Work, or any scheduled requirement thereof, with the diligence that will ensure its completion in accordance with the applicable deadline set forth in the Project Schedule and Milestone, or failure to complete said Work, or any scheduled requirement thereof, in accordance with each deadline set forth in the Project Schedule and Milestone, as a result of such refusal or failure to prosecute;

**12.01.2.** failure of Developer to pay or perform any other of its obligations under this Agreement;

**12.01.3.** an event of default under any applicable Governing Document after any applicable notice and cure period set forth therein; and any event under any applicable Governing Document, which with the passage of time or giving of notice, would constitute an event of default thereunder;

**12.01.4.** if any representation of Developer under this Agreement or any Governing Document is untrue or inaccurate in any material respect, in the reasonable judgment of the BHA, as of the date when made, and such representation of the Developer shall be deemed made as of the date of this Agreement, and each and every disbursement by the BHA of any funds to the Developer pursuant to this Agreement or any Closing Document; and

**12.01.5.** Developer's being or becoming insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for the Project or for any substantial part of its property, (ii) a bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding instituted by Developer under the laws of any jurisdiction, or any such proceeding instituted against the Developer under the laws of any jurisdiction that has not been stayed or dismissed within 90 days after its institution, (iii) any action or answer by Developer approving or, consenting to, or acquiescing in, any such proceeding, or (iv) the levy of any distress, execution or attachment upon the property of Developer which shall substantially interfere with its performance hereunder.

**12.02. Remedy Upon Default.** Upon the occurrence of any Event of Default by Developer, the BHA shall give written notice thereof to Developer. If Developer shall fail to cure the default within thirty (30) days of such notice, the BHA may, by written notice, terminate Developer's right to proceed with the Work (or separable part of the Work), and terminate this Agreement, or terminate this Agreement as to the separable part of the Work.

In addition, if Developer shall fail to cure the default within thirty (30) days of BHA's written notice, the BHA shall immediately be entitled, and without further delay or notice, to present that certain Letter of Credit ("LOC") delivered to BHA by Developer in accordance herewith and draw the principal sum under the LOC or any amount thereof to which the BHA reasonably believes it is entitled due to the Event of Default. The terms and form of the LOC shall be as follows:

**12.02.1.** The LOC shall be an irrevocable letter of credit, issued by a commercial bank, to be approved in writing by BHA (which approval shall not be unreasonably withheld, conditioned or delayed), whose deposits are insured by the Federal Deposit Insurance Corporation, and which has an office in the Boston, Massachusetts metropolitan area (the "Approved Bank"), in the amount of Two Hundred Thousand and 00/100 Dollars (\$200,000).

**12.02.2.** The LOC shall continuously have a term of no less than one (1) year. Not later than the forty-fifth (45<sup>th</sup>) day before the expiration of the LOC, Developer shall deliver to BHA a renewal or replacement of the LOC having the effect of renewing the

expiring LOC or replacing the expiring LOC with a new Letter of Credit issued by the same or another Approved Bank acceptable to the BHA, and having a term of at least an additional one (1) year, and otherwise on terms materially identical to those of the expiring LOC, as reasonably determined by the BHA.

**12.02.3.** In the event, and notwithstanding anything to the contrary set forth elsewhere in this Agreement, the Developer fails to deliver a renewal or replacement of the expiring LOC by said forty-fifth (45<sup>th</sup>) day prior to such expiration of the LOC, BHA may draw the principal sum under the LOC, in which event BHA shall thereupon be entitled to the cash evidenced/secured by the expiring LOC in accordance with BHA's rights under this Agreement.

**12.02.4.** The remedies of the BHA, upon the occurrence of an Event of Default not cured within any applicable notice and grace period provided hereunder, shall include but not be limited to: (a) terminating this Agreement, or terminating this Agreement as to a separable portion of the Work, and (b) making a draw under the LOC in an amount to which the BHA reasonably believes it is entitled; notwithstanding the foregoing, Developer shall fully and personally be liable and subject to legal action for Event(s) of Default resulting from fraud or material intentional misrepresentation by the Developer.

**12.02.5.** The Developer represents and warrants to the BHA that Developer has succeeded to all of the right, title and interest in the LOC, and that the BHA's entitlement to draw upon the LOC will not be impaired or precluded by the fact that the Developer arranged for the LOC to be issued in its capacity as the Developer. Without limitation of the foregoing, the BHA expressly agrees that the LOC shall be returned to the Developer at the time of Closing of the Final Phase of the Project, in the amount remaining if any draw thereunder has been made by the BHA in accordance with this Agreement. In the event the amount to which the BHA reasonably believes it is entitled under the LOC, pursuant to **subsection 12.02.** above, is disputed by the Developer, then the Developer may pursue any legal or equitable action to establish the accuracy of the BHA's determination. If the Developer does so, and the result of the legal or equitable action indicates that the BHA was actually entitled to a greater sum under the LOC, the BHA shall be entitled to draw such differential under the LOC. If BHA overstated the amount to which the BHA was entitled under the LOC, the BHA shall take whatever actions are necessary in order to increase the amount evidenced by the LOC by such differential.

**12.03. Force Majeure.** Developer's right to proceed shall not be terminated if the delay in prosecuting the Work is due to changes ordered in the Project by the BHA, or by labor disputes not directed specifically at its contractors or their subcontractors, or other causes which the BHA reasonably determines may justify delay, or by fire or other casualty, or failure by any government agency other than the BHA to issue required approvals within a reasonable period of time (not less than thirty (30) days following an appropriate and complete application or submission to them) then the applicable Project Schedule deadline shall be extended for a period of time corresponding to the period of delay (a "**Force Majeure Event**"). To the extent either Party's performance of any obligations under this Agreement is delayed or precluded by any Force Majeure Event,



then such Party's performance shall be delayed or extended for a period of time corresponding to the period of delay.

**12.04. Performance Contingency.** Neither the BHA's nor Developer's right to proceed shall be terminated if the delay in prosecuting the Work is due solely to a Force Majeure Event.

**12.05. Extension of Time to Perform.** Developer shall promptly notify the BHA in writing of a delay or impending delay attributable to a force majeure event. Such notice shall state: (i) the delay; (ii) the reason(s) for the delay; (iii) Developer's proposed method for correcting such delay; (iv) Developer's proposed schedule for resolving the delay and for achieving subsequent aspects of the Work, and (v) the impact, if any, on the Project Budget. Upon receipt of such notice or upon receipt of a written request of Developer to extend the time for performance of any Project Schedule or Milestone deadline, the BHA will promptly review Developer's notice, and determine whether the facts stated therein, warrant an extension. If so, the BHA will grant such extension. The granting of such extension will not be unreasonably withheld or delayed and such extension will be for such period of time as Developer has reasonably requested, provided that Developer has been diligently carrying out the Work.

**12.06. Loss of Funding.** If the BHA reasonably determines that Developer's lack of progress toward the achievement of the Project Schedule or Milestone, or Developer's failure to achieve a Project Schedule or Milestone deadline, threatens the loss of a material element among the sources of funding for the Project, as reasonably determined by the BHA, including, but not limited to, the loss of LIHTCs allocated to any Phase, then in addition to any other remedies it may have hereunder, the BHA may require Developer to undertake such legal actions which, in the reasonable judgment of the BHA, will assist in preserving such financial resources for the Project. Such actions may include the filing of such certificates or instruments necessary to preserve such financing and to otherwise take actions which will permit the BHA to assume commitments provided to Developer.

**12.07. Assignment of Work Product.** Without limiting any of the BHA's rights under **subsection 7.03(c)**, or any of Developer's obligations under **subsection 7.03(c)**, upon termination of this Agreement pursuant to the BHA's rights under this Article 12, or for any other reason, all Project Documents shall be the property of or otherwise properly assigned to the BHA without further compensation to Developer and Developer will deliver the original Project Documents to the BHA immediately upon request. BHA will reimburse Developer for third party costs incurred by Developer in obtaining the foregoing (to the extent not already reimbursed to Developer by the BHA, and to the extent only with respect to the degree to which the foregoing has been completed) through the date of termination, provided such costs are consistent with the Project Budget and documented by Developer, and provided further that termination is not attributable to Developer's default under this Agreement. The Developer expressly acknowledges and agrees that any obligation of the BHA to pay third-party costs in connection with its receipt of any Project Document, as referred to above, is not a condition precedent to the BHA's entitlement to receive all such Project Documents.

## ARTICLE 13. TERMINATION FOR CONVENIENCE/DEFAULT BY BHA

**13.01. Termination for Convenience.** At any time prior to the financial closing and the execution of the Governing Documents, the BHA may terminate this Agreement in whole, or in part, whenever the BHA determines that such termination is in the best interest of the BHA. Any such termination shall be effected by written notice to Developer specifying the extent to which the performance hereunder is terminated, and the date upon which such termination becomes effective.

**13.02. Remedy Upon Termination for Convenience.** If the performance of the Work and/or this Agreement is terminated, either in whole or in part, pursuant to **Section 13.01** and this Section 13.02, the BHA shall be liable to Developer for reasonable and proper costs resulting from such termination which costs shall be paid to Developer within ninety (90) days of receipt by the BHA of a properly documented and presented claim setting out in detail: (a) total cost of all third-Party costs incurred to date of termination, provided such costs are consistent with the Project Budget, less the total amount of reimbursements previously made to Developer; (b) the cost of settling and paying claims (including reasonable profit) under subcontracts and material orders for work performed and materials and supplies delivered to the Property, payment for which has not been made by the BHA to the Developer; (c) the cost of preserving and protecting the Work already performed until the BHA or assignee takes possession thereof or assumes responsibility therefor, and (d) the lesser of (i) 25% of the total development compensation required to be paid under the Project Budget, less the total amount of such development compensation previously paid to Developer, or (ii) One Hundred Thousand and 00/100 Dollars (\$100,000.00). In no event under this Agreement, will either Party be entitled to any special, consequential, lost opportunity or lost profits damages as a remedy in the event of the other Party's default. The 25% total development compensation or the One Hundred Thousand and 00/100 Dollars (\$100,000.00), as applicable, referred to in clause (d) above, shall be distributed to the Developer and the BHA, as referenced in **Section 3.05** above, in the percentages indicated therein to be delivered to such entities.

**13.03. Post Closing.** Notwithstanding the foregoing, in no event shall a termination for convenience or a default by the BHA impair or delay the performance by BHA or Developer of all its obligations under any Closing Documents, which have been executed and delivered by either of such Parties.

**13.04. Default by the BHA.** If the BHA shall fail or refuse to perform its obligations hereunder and such failure or refusal materially impairs the ability of Developer to proceed with the Project, as reasonably determined by the BHA, and if such failure or refusal continues for a period of thirty (30) days after written notice to that effect from Developer, or such longer time, not to exceed one hundred eighty (180) days as the nature of the cure may require if expeditiously pursued, Developer may by written notice terminate this Agreement and shall be entitled to the same remedies as if a Termination for Convenience had occurred and such shall be Developer's sole remedy hereunder and at



law or in equity, and Developer hereby waives any and all rights, hereunder or at law or in equity, other than the foregoing.

**13.05. No Special Damages.** In no event under this Agreement, will either Developer or the BHA be entitled to any special, consequential, lost opportunity or lost profits damages as a remedy in the event either's default.

#### **ARTICLE 14. TERMINATION BY MUTUAL AGREEMENT**

**14.01. Development Contingencies.** The Parties acknowledge and agree that the BHA's and Developer's entitlement and/or ability to proceed with the Project and to fulfill the terms and conditions of this Agreement and any applicable Governing Document may be precluded by the failure to satisfy necessary conditions precedent to their respective ability to perform (i.e., conditions such as failure by third Parties over which Developer and the BHA have limited control to perform their respective tasks) or factual circumstances which could not reasonably have been determined as of the date of this Agreement) ("**Development Contingencies**").

**14.02. Termination of Agreement.** In the event a Development Contingency is not satisfied, and the failure of such Development Contingency to be satisfied precludes the accomplishment of a Phase to which the Development Contingency pertains, the Parties will attempt in good faith to revise the Phase concepts and financing, in order to avoid the adverse impact of such Development Contingency's failure to occur. If the Parties cannot agree within sixty (60) days to amend the Phase, as aforesaid, despite good faith efforts to do so, then Developer and/or the BHA may terminate this Agreement by delivering written notice. This Agreement does not apply to phases that have previously closed.

**14.03. Remedy Upon Termination.** Upon termination of this Agreement pursuant to this **Article 14**, the BHA shall return the LOC to Developer provided no Event of Default is outstanding and shall reimburse the Developer for third-Party costs incurred in pursuing the Project through the date of termination, provided such costs are consistent with the Project Budget and documented by the Developer. Upon full payment as provided in this **Section 14.03**, all Project Documents shall be the property of or otherwise properly assigned to the BHA. The foregoing is in addition, and not in limitation of, the Developer's obligations under **subsection 7.03(c)** in regard to the Project Documents.

#### **ARTICLE 15. REPRESENTATIONS**

**15.01. Representations of the BHA.** The BHA represents that as of the date hereof:

**15.01.1.** the BHA has the power, authority and legal right to enter into and perform this Agreement and each other agreement or instrument entered into or to be entered into by the BHA pursuant to this Agreement, and

**15.01.2.** this Agreement has been duly entered into and constitutes the legal, valid and binding obligation of the BHA, enforceable in accordance with its terms, subject to the application of equitable principles.

**15.02. Representations of the Developer.** Developer represents that as of the date hereof:

15.02.1 Developer is duly organized and existing in good standing under the laws of Massachusetts and has the power and authority to own or hold its properties, including all leasehold interests contemplated hereunder, and to enter into and perform its obligations under this Agreement, and each other agreement or instrument entered into or to be entered into by it pursuant to this Agreement.

15.02.2 Developer has the power, authority and legal right to enter into and perform this Agreement and each other Governing Document and each Closing Document entered into, or to be entered into, by it pursuant to this Agreement, and the execution, delivery and performance hereof and thereof (i) have been duly authorized, (ii) have the requisite approval of all governmental bodies, (iii) will not violate any judgment, order, law or regulation applicable to Developer or any provisions of Developer's organizational documents, and (iv) do not (A) conflict with, (B) constitute a default under or (C) result in the creation of any lien, charge, encumbrance or security interest upon any assets of Developer or under any agreement or instrument to which Developer or Owner is a Party or by which Developer its respective assets may be bound or affected.

15.02.3 This Agreement has been duly entered into and constitutes, and each agreement or instrument to be entered into by the Developer pursuant to this Agreement, when entered into, will be duly entered into and will constitute, the legal, valid and binding obligation of the Developer, enforceable in accordance with its terms, subject to equitable principles.

15.02.4 There are no pending or, to the knowledge of Developer, threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition of Developer, or the ability of Developer to perform its obligations under this Agreement, or any guaranty agreement entered into by Developer, or any other Governing Document or Closing Document entered into by Developer pursuant to this Agreement.

15.02.5 Developer has made or will make an independent investigation and inquiry into all matters relevant to its entering into and performing its obligations hereunder and under the Governing Documents, without reliance on any statement or representation of the BHA.

## **ARTICLE 16. MISCELLANEOUS**

**16.01. Term.** Unless sooner terminated in accordance with the terms hereof, this Agreement shall continue in effect as to the BHA and Developer until the satisfaction of all requirements of this Agreement to be performed by Developer have been performed. The Closing on the construction or permanent financing and/or the BHA-approved admission of the investor limited partner into the respective Owner Entities shall terminate this Agreement as to the applicable sub-phase and thereafter the relationship of the parties, as applicable, shall be governed by the Closing Documents.

**16.02. Effect of Expiration.** Upon the expiration of this Agreement, the obligations of Developer and the BHA under this Agreement shall cease and be of no effect; provided that any obligation (a) for the payment of money, performance or otherwise, arising from the conduct of the Parties pursuant to this Agreement prior to such expiration shall not be affected by such expiration and shall remain in full force and effect until satisfied in full or until all remedies available pursuant to this Agreement have been (i) exercised in full, (ii) waived or (iii) barred, or (b) which is, by the express provisions of this Agreement, intended to survive the termination/expiration of this Agreement and/or the entry into any Closing Documents for the Project hereunder.

**16.03. Disclaimer of Relationships.** Nothing contained in this Agreement, nor any act of HUD or BHA, shall be deemed or construed to create any relationship of third Party beneficiary, principal and agent, limited or general entity, joint venture, or any association or relationship involving HUD, except between HUD and BHA as provided under the terms of the annual contributions contract between them.

**16.04. Method of Giving Notice/Approval.** Any notice required or permitted under this Agreement shall, except as otherwise expressly permitted by this Agreement, be in writing and shall be deemed to have been duly given on the date of deposit with the U.S. Mail, certified mail, return receipt requested, postage prepaid, or with a recognized overnight commercial courier, addressed to the addressee at the address stated below, or at the most recent address specified by written notice given to the other Party in the manner provided in this Article. As a matter of convenience, but not a requirement, the sending Party where possible also will transmit to the other Party a copy of the communication by electronic means, if available to the Parties. Notices concerning emergency situations may be orally communicated in person or by telephone, or sent by either hand delivery or telegraphic, teleprinter, or tele-typewriter service, but shall be promptly confirmed by supplemental written notice as provided herein.

Notices to the BHA shall be addressed to:

Boston Housing Authority  
52 Chauncy Street  
Boston, MA 02111  
Attn: Administrator

with copies to:

Boston Housing Authority  
52 Chauncy Street  
Boston, MA 02111  
Attn: General Counsel

Notices to Developer shall be addressed to:

with copies to:

\_\_\_\_\_

The addresses or designated persons to receive communications may be changed by notification to the other Party pursuant to this Article.

**16.05. Waiver.** The waiver by any Party hereto of its rights arising out of, or in connection with an Event of Default or other breach, failure or default under this Agreement by any other Party hereto shall not operate or be construed to operate as a waiver of any subsequent Event of Default, breach, failure or default.

**16.06. Entire Agreement; Modifications.** The provisions of this Agreement, the WHEREAS clauses in this Agreement, all documents referred to in this Agreement (e.g. the Proposal, the RFP, etc.), all Exhibits referred to in this Agreement, and the Governing Documents shall (a) constitute the entire agreement among the Parties for the design, development and construction of the Project and development of the Property, and the same supersedes all prior agreements and negotiations (written or oral), which are not expressly within the text of this Agreement and/or the text of the Governing Documents, and (b) be modified only by written agreement duly executed by the Parties.

**16.07. Conflict.** In the event of any conflict or ambiguity between or among any of the Governing Documents, the priority of the controlling document is shown below:

- (1) Closing Documents;
- (2) This Agreement;
- (3) RFP;
- (4) Proposal.

Examples of how the priority of the foregoing documents control when there is a conflict or ambiguity between any one or more of the foregoing Governing Documents are:

(a) in the event there is a conflict between the Closing Documents and this Agreement, the Closing Documents will control, because this Agreement is lower in the sequence than the Closing Documents, and

(b) in the event there is a conflict between the Closing Documents and any other Governing Document, the Closing Documents will control, because all of the Governing Documents are lower in the sequence than the Closing Documents (i.e., Closing Documents # is lower than all other Governing Documents' #s).

All Governing Documents shall be read, to the extent possible, to be consistent with each other, so as to avoid, if possible, any conflict or ambiguity arising between or among the Governing Documents.

**16.08. Headings and Section References.** Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement. All references herein to Articles, Sections or subsections are references to such designations in this Agreement.

**16.09. Governing Law.** This Agreement shall in all respects be governed and construed in accordance with the laws of the Commonwealth of Massachusetts, including all matters of construction, validity and performance. The venue of any court proceeding to interpret or enforce the provisions of this Agreement shall be Boston, Massachusetts. Additionally, the provisions of **subsection 5.07(d)** of this Agreement shall equally apply in this **Section 16.09**.

**16.10. Multiple Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which shall constitute a fully-executed Agreement, and it shall not be necessary in making proof of this Agreement or the terms hereof to produce or account for more than one of such counterparts provided that the counterpart produced bears the signature of the Party sought to be bound.

**16.11. Severability.** In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the Parties hereto shall negotiate in good faith to agree to such amendments, modifications, or supplements of or to the Agreement and take such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, or supplemented or otherwise affected by such action, remain in full force and effect.

**16.12. Cooperation Regarding Claims.** If either Developer or the BHA shall receive written notice, within one (1) year following the Project Closing hereunder, of any written claim, demand, action, suit or proceeding that will result in a claim for indemnification by such Party against any other Party pursuant to this Agreement or any of the Governing Documents to which such Party and the other Party have entered into, such Party shall, as promptly as possible, give the other Party written notice of such claim, demand, action, suit or proceeding, including a reasonably detailed description of the facts and circumstances relating to such claim, demand, action, suit or proceeding. The Parties hereto shall consult with each other regarding, and cooperate in respect of, the response to and the defense of any such claim, demand, action, suit or proceeding; provided, however, the Party charged with the responsibility to indemnify pays all costs incurred by the other Party in performing its consultation and cooperation obligations hereunder.

**16.13. Further Assurances.** Each of Developer and the BHA further covenant to cooperate with one another in all reasonable respects necessary to consummate the transactions contemplated by this Agreement, and each will take all reasonable actions

within its authority to secure cooperation of its officials, officers, agents and other third Parties, with whom such Party has influence.

**16.14. Party Representatives.** Each of the BHA and Developer shall each notify the other in writing of its designation of an individual to act as its representative with respect to matters which may arise under this Agreement. Each representative shall have such authority as shall be expressly given in such written designation, to transmit instructions and receive information and to confer with each other Party's representative. At any time after the initial designation by any Party of its representative, such Party may designate a successor representative by similar written notice to the other Party.

**16.15. Labor Standards/Fixed or Floating Units.** The BHA and Developer shall ensure that labor standards applicable to the development of federally funded housing (including, but not limited to Davis-Bacon Act, 40 U.S.C. 276a et seq.), are met.

**16.16. Conflict of Interest.** The Parties acknowledge and agree that this Agreement does not violate any applicable conflict of interest provisions.

**16.17. Relocation Activities.** The BHA has received or will seek HUD approval of its disposition activities required by HUD for the implementation of this Agreement, including a proposed plan for relocation of tenants and for providing replacement housing. The BHA has complied, and shall continue to comply, with all Federal, State and local requirements governing the relocation of residents and the provision of replacement housing under this **Section 16.17**, including the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended by the Uniform Relocation Act Amendment, and any and all other Federal or state laws, rules or regulations. Because the BHA is solely responsible for the relocation of residents and compliance with all applicable federal, state and local laws, including the Uniform Relocation Act Amendment, governing the relocation of residents and the providing of replacement housing, BHA shall indemnify and hold the Developer harmless from any liability arising in connection with the foregoing obligations of the BHA.

**16.18. Selection of Professionals, Contractors, and Consultants.** In no event shall Developer contract with any party which has been debarred or suspended by HUD under 24 CFR 941.606(n)(1)(ii)(B) or any successor regulation. All contracts entered into by the Developer with third parties shall contain all standard provisions required by BHA and shall otherwise be consistent with the requirements of this Agreement.

(a) **Prohibited Arrangement.** The Developer hereby represents and warrants that: (i) if there is an identity of interest between the Developer and the Contractor (i.e., the general contractor), the Developer has demonstrated to BHA's satisfaction that the Contractor (i.e., the general contractor) was the lowest bidder in response to solicitation, or (ii) HUD has provided a written waiver of the certification requirement of 24 CFR § 941.606(n)(ii)(B) or any successor regulation.

(b) **MBE and WBE Participation.** To achieve greater participation of minority owned business enterprises ("MBEs") and women owned business enterprises



(“WBEs”) in contracts administered directly or indirectly by the BHA pursuant to Executive Orders 11625 and 12138, and the BHA Minority and Women Provision (“MWPP”), attached hereto as **Exhibit L**, the Developer agrees to use its good faith best efforts to:

- (i) place qualified MBEs and WBEs on solicitation lists;
- (ii) divide the project services into smaller tasks or quantities to permit maximum participation by MBEs and WBEs and small business concerns;
- (iii) use the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, any local minority assistance organizations and various state and local government small business agencies;
- (iv) achieve the Project numeric goals pursuant to the MWPP;
- (v) comply with such additional requirements relating to MBEs and WBEs as set forth in the MWPP and hiring and training plans developed by the Owner Entity, and approved by the BHA.

(c) **Resident Employment.** Developer shall ensure that employment and training opportunities generated as a result of the Project be directed to qualified residents. A minimum of thirty percent (30%) of new hires and trainees on the Project shall be qualified residents, to the greatest extent feasible. Developer shall ensure that the resident employment hiring and training preferences are followed when such opportunities arise, directing opportunities in the following order of priority: 1) residents of Mary Ellen McCormack, 2) residents of other BHA developments, 3) HUD YouthBuild participants, 4) BHA leased housing participants, and 5) low-income residents of the Boston metropolitan statistical area. Additionally, Developer shall also commit to enforcing a minimum ten percent (10%) resident employment labor hours goal for the Project (i.e., at least ten percent (10%) of the total labor hours on the Project are to be completed by qualified residents). Developer shall also ensure that contracting opportunities are directed to resident-owned business concerns. A minimum of ten percent (10%) of the value of construction contracts and three percent (3%) of the value of non-construction contracts shall be awarded to resident-owned business concerns, to the greatest extent feasible.

Specific resident employment obligations and procedures are detailed in the BHA Resident Employment Provision (“**REP**”), attached hereto as **Exhibit M**. The BHA REP shall govern additional aspects of resident employment compliance and are incorporated herein by reference.

(d) **MBE/WBE and Resident Employment Reports.** At least thirty (30) days prior to execution of a construction contract for the Project or any sub-Phase thereof, the Developer shall cause each general contractor, including the Contractor, to provide both a certification of intent to comply pursuant to the MWPP and a Resident Employment Compliance Plan pursuant to the REP. The BHA reserves the right to hold a pre-construction conference before execution of the construction contract or to schedule a pre-

construction conference to occur promptly after execution of the construction contract. Until the Project is closed out by BHA, Developer shall deliver to BHA on or before the 10th day of each month, (a) all financial information required, including Certified Payroll Reporting Requirements, for the preceding month; (b) all documentation showing compliance with all MBE/WBE requirements and Resident Employment Requirements, including but not limited to compliance plans and employee lists, which may be required under the Governing Documents for the preceding month; and (c) all additional information that BHA may otherwise request.

#### **16.19. Recordkeeping Audit and Reporting Requirements.**

(a) **Recordkeeping; Access.** Without limiting other obligations of Developer hereunder, Developer's books and records pertaining to its performance under this Agreement shall be kept in accordance with generally accepted accounting principles, and shall be retained for at least three (3) years after the BHA makes final payment to Developer under this Agreement and all other pending matters are closed. Developer agrees to grant a right of access to the BHA, HUD, any agency providing funds to BHA, the Comptroller General of the United States, and any of their authorized representatives, with respect to any books, documents, papers, or other records pertinent to this Agreement in order to make audits, examinations, excerpts, and transcripts.

(b) **Audit.** BHA, HUD, any agency providing funds to BHA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have the right to perform any audit of Developer's finances and records related to its performance under this Agreement, including without limitation, the financial arrangement with anyone Developer may delegate to discharge any part of its obligations under this Agreement.

(c) **Contractors.** Developer agrees to ensure that the recordkeeping, access, audit and reporting requirements set forth in this **Section 16.19** are also made legally binding upon any contractor or subcontractor that receives funds derived from the BHA, HUD, or any agency providing funds to BHA in connection with the Project.

**16.20. Environmental Clearance.** The Parties certify that (1) until the environmental review requirements contained at 24 CFR § 50 or any successor regulation are completed to the satisfaction of HUD, the Parties shall take no action to demolish, rehabilitate, or otherwise affect the improvements now on the Property, or expend federal funds on the improvements other than with respect to action that is taken in the normal maintenance or operation of the improvements, and (2) the Parties shall take such actions as may be necessary to preserve the improvements in their current condition, until such time as the environmental review is completed. Provided further, that upon violation of either of the preceding provisos, the BHA and Developer agree immediately to terminate this Agreement. Provided further, that in the event that a separate environmental review with respect to actions to abate asbestos is completed under 24 CFR Part 50 and HUD provides written approval for such actions, such actions may be undertaken by the Parties in accordance with the conditions of such approval.



**IN WITNESS WHEREOF**, the Parties hereto have executed this agreement under seal the date and year first above written.

[SIGNATURES NEXT PAGE]

INFORMATIONAL COPY

**BOSTON HOUSING AUTHORITY**

By: \_\_\_\_\_  
William E. McGonagle  
Its Administrator

**DEVELOPER**

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

INFORMATIONAL COPY

# **DEVELOPMENT AGREEMENT**

between

**BOSTON HOUSING AUTHORITY**

and

**[DEVELOPER]**

## **EXHIBIT A**

### **DEFINITIONS**

Act shall refer to the United States Housing Act of 1937 (42 U.S.C. § 1437, *et seq.*), as amended from time to time, any successor legislation, and all implementing regulations issued thereunder or in furtherance thereof.

Architect shall refer to the architect(s) for the Project as designated in the Proposal.

Area Median Income shall refer to the Median Aggregate Annual Household Income for the Boston Metropolitan Statistical Area set forth in or calculated pursuant to regulations promulgated by HUD.

Certified Payroll Reporting Requirements shall refer to the Developer's affirmative obligation to monitor compliance with applicable federal and/or state labor standards, minimum wage and/or prevailing wage laws and regulations and the reporting requirements related thereto.

Closing shall refer to, with respect to any Phase of the Project, the date on which principal commitments regarding such Phase of the Project, including financing, land conveyances, covenants, agreements and contracts, are converted to binding obligations of performance.

Closing Documents shall refer to all those documents executed at Closing and/or establishing all the Developer's obligations with respect to a Phase, including without limitation, all documents evidencing the creation of, and promise to repay debt, in regard to financial commitments undertaken by the Developer to finance the construction and related services necessary to develop each Phase of the Project, and the establishment and operation of Owner Entity, all of which are subject to the prior written approval of the BHA.

Construction Completion shall refer to, with respect to each Phase, (A) the completion of all construction subject to no liens, claims or encumbrances that are not permitted under the Governing Documents, as evidenced by the issuance of (1) an unconditional, permanent certificate of occupancy by the Inspectional Services Department of the City of Boston and such other governmental permits required in connection therewith for the use and occupancy of the Phase as a residential facility; (2) a certification of the Architect in the

form required by the Governing Documents; (3) a report from the construction representative of the BHA that all design, site, construction finishing work and any necessary utilities and roads have been finished and made available for use in accordance with the Approved Plans; and (4) the delivery by Developer of final releases of lien from all the contractors (all general construction contractors and their subcontractors) and such other documentation as may be necessary to insure that all permanent lenders have closed their loans, as may be applicable; and (B) Developer has fully satisfied all other obligations and duties of Developer under this Agreement which, by their terms or by implication, are required to be performed on or before the satisfaction of the preceding subparagraph (A).

Contractor shall refer to \_\_\_\_\_.

DHCD shall refer to the Commonwealth of Massachusetts Department of Housing and Community Development.

Finalized Schematic Plans and Specifications shall refer to the design documents specifying the number and size of residential units, all non-residential facilities, outline specifications for all construction and drawings of all facades, and including cost estimates for the construction of each element of the plans and a list of proposed modifications that would be needed to bring costs within the Project Budget, including the Project Budget.

Governing Documents shall refer to those documents described in the recitals to this Agreement.

HAP shall refer to those certain housing assistance payments contracts between the BHA and each Owner Entity of a Phase, including for Project-Based Voucher Units.

HUD shall refer to the U.S. Department of Housing and Urban Development.

Institutional Lender(s) shall refer to a savings bank, commercial bank, trust company, savings and loan association, insurance company, real estate investment trust, pension trust or fund established for a corporation listed on the New York or American Stock Exchange, for state or municipal employees or for a national trade union, an agency or authority of any federal, state, or local government, any quasi-public entity, and any private or nonprofit entity that provides financing for affordable housing.

MBE/WBE shall refer to those certain contract compliance requirements involving employment and/or economic opportunities resulting from this Agreement, the Work and any services to be provided as a result of or pursuant to the Governing Documents.

Party and/or Parties shall refer to the entities identified as the BHA and Developer on page 1 of this Agreement.

Phase shall refer to a portion of the Project to be accomplished pursuant to separate Closing Documents.

Project-Based Voucher Units shall refer to those units to be developed at the Project and eligible to receive subsidy pursuant to certain HAP contracts to be executed between BHA

and the applicable Owner Entity as authorized by Section 8 of the Act and 24 CFR part 983.

Project Budget shall refer to that budget attached hereto as Exhibit C.

Project Schedule shall refer to that schedule attached hereto as Exhibit B.

Resident Employment Requirements shall mean the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) and its implementing regulations at 24 CFR Part 135, which shall be applied to the employment, training and/or economic opportunities resulting from this Agreement, the Work or any services to be provided as a result of or pursuant to the Governing Documents, regardless of whether any funding is provided that is subject to said Section 3 and the implementing regulations.

INFORMATIONAL

COPY

**DEVELOPMENT AGREEMENT**

between

**BOSTON HOUSING AUTHORITY**

And

**DEVELOPER**

**EXHIBIT B**

**PROJECT SCHEDULE**

Activity

Commencement Date

Completion Date

Financial Closing

Construction

Lease-up

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**DEVELOPMENT AGREEMENT**

between

**BOSTON HOUSING AUTHORITY**

And

**DEVELOPER**

**EXHIBIT C**

**PROJECT BUDGET  
(See Attached)**

INFORMATIONAL COPY

**DEVELOPMENT AGREEMENT**

**between**

**BOSTON HOUSING AUTHORITY**

**And**

**DEVELOPER**

**EXHIBIT D**

**CONSTRUCTION COMPLETION GUARANTY**

**THIS CONSTRUCTION COMPLETION GUARANTY** (this “**Guaranty**”) is made as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, in favor of the **BOSTON HOUSING AUTHORITY (“BHA”)** by \_\_\_\_\_ (the “**Guarantor**”), which Guarantor shall be liable under the covenants, terms and conditions hereof.

**WHEREAS**, BHA has agreed to convey certain real property (the “**Property**”) to \_\_\_\_\_ (the “**Developer/Owner**”) for the purpose of redevelopment of a project pursuant to a ground lease (the “**Ground Lease**”) (the “**Project**”)

**WHEREAS**, the Project is to be constructed and operated in accordance with plans and specifications heretofore submitted by the Developer/Owner and approved by BHA (the “**Plans**”);

**WHEREAS**, the Project is to be completed within the schedule established by the Development Agreement between the Developer/Owner and the BHA dated \_\_\_\_\_, 2017 (the “**Development Agreement**”));

**WHEREAS**, Guarantor has a financial interest in the Developer/Owner and will derive a direct financial benefit from the development of the Project; and

**WHEREAS**, in order to induce BHA to provide the Construction and Permanent Loan and to enter into the Loan Agreement, the Guarantor has agreed to execute and deliver this Guaranty.

**NOW THEREFORE**, to induce BHA to provide the Property to the Developer/Owner, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby covenants and agrees as follows:

1. Guarantor absolutely and unconditionally guarantees to BHA, that the Developer/Owner shall construct, equip and complete the Project free and clear of liens in accordance with the Plans, and in accordance with the terms and conditions of the



Development Agreement and the Ground Lease, and within the time period required by the Development Agreement and the Ground Lease.

2. If the Developer/Owner fails to do the matters specified in **Section 1** on or before the time such matters are to be done by the Developer/Owner, Guarantor shall:

(a) construct, equip and complete the Project free and clear of liens, in accordance with the Plans and the terms and conditions of the Development Agreement and the Ground Lease, and in conformance with all applicable laws, rules, regulations and requirements of all governmental authorities having jurisdiction;

(b) remove any lien arising from constructing, equipping, or completing the Project, and make payment in full, subject to contractual retention rights, to all laborers, subcontractors and materialmen on or before the date of completion for the costs of the Project and related costs; and

(c) pay all costs and expenses incurred in doing (a) and/or (b) of this **Section 2**, and pay to or reimburse BHA for all expenses incurred by BHA with respect to its carrying out of obligations otherwise imposed upon Developer/Owner under the Development Agreement and the Ground Lease.

3. The Guarantor expressly agrees that BHA may, in its sole and absolute discretion, without notice to or further assent of the Guarantor and without in any way releasing, affecting or impairing the obligations and liabilities of the Guarantor hereunder: (i) waive compliance with, or any defaults under, or grant any other indulgences with respect to, the Development Agreement or the Ground Lease; (ii) modify, amend, or change any provisions of the Development Agreement or the Ground Lease; (iii) grant extensions or renewals of or with respect to the Development Agreement or the Ground Lease or effect any release, compromise or settlement in connection with the Development Agreement or the Ground Lease; (iv) make advances for the purpose of performing any term or covenant contained in the Development Agreement or the Ground Lease with respect to which Developer/Owner shall be in default; (v) assign or otherwise transfer this Guaranty or any interest therein or herein; and (vi) deal in all respect with Developer/Owner as if this Guaranty were not in effect. The obligations of the Guarantor under this Guaranty shall be unconditional, absolute and irrevocable, and shall survive the expiration or termination of the Development Agreement, but shall nevertheless terminate and be of no further force or effect upon the 1<sup>st</sup> annual anniversary date of the date of issuance of an unconditional Certificate of Occupancy for the Project by the City of Boston Inspectional Services Department, except as to any claim made thereunder prior to that date.

4. The liability of the Guarantor under this Guaranty shall be primary, direct and immediate and not conditional or contingent upon pursuit by BHA of any remedies it may have against Developer/Owner, its successors and assigns, with respect to the Development Agreement or the Ground Lease whether pursuant to the terms thereof or by law. Without limiting the generality of the foregoing, BHA shall not be required to make any demand on Developer/Owner, or to sell at foreclosure or otherwise pursue or exhaust

its remedies against the Project or any part thereof or against Developer/Owner before, simultaneously with or after enforcing its rights and remedies hereunder against the Guarantor. Any one or more successive or concurrent actions may be brought hereon against the Guarantor either in the same action, if any, brought against Developer/Owner, or in separate actions, as often as BHA, may deem advisable.

5. The Guarantor hereby expressly waives (i) presentment and demand for payment and protest non-payment; (ii) notice of acceptance of this Guaranty and of presentment, demand and protest; (iii) notice of any default hereunder or under the Development Agreement or the Ground Lease and of all indulgences; (iv) demand for observance or performance of, or enforcement of, any terms or provisions of this Guaranty or the Development Agreement or the Ground Lease; (v) all other notices and demands otherwise required by law which the Guarantor may lawfully waive; and (vi) any defense to any action brought against Guarantor, including, without limitation, any defense based on any statute of limitations and on any legal disability of Developer/Owner and any discharge and limitation of liability of the Developer/Owner to BHA whether consensual or arising by operation of law or any bankruptcy, insolvency or debtor-relief proceeding, or from any other cause. The Guarantor also waives trial by jury in any action brought on or with respect to this Guaranty and agrees that in the event this Guaranty shall be enforced by suit or otherwise, the Guarantor will reimburse BHA, upon demand, for all expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees.

6. If the Guarantor shall advance any sums to Developer/Owner or its successors or assigns or if Developer/Owner or its successors or assigns shall hereafter become indebted to the Guarantor, such sums and indebtedness shall be subordinate in all respects to the amounts then or thereafter due and owing to BHA under the Development Agreement or the Ground Lease. Nothing herein contained shall be construed to give the Guarantor any right of subrogation in and to the Development Agreement or the Ground Lease or all or any part of BHA's interest therein, until all amounts owing to BHA have been paid in full.

7. Any notice, demand, request or other communication which BHA may desire to give to the Guarantor with respect to this Guaranty, shall be deemed sufficient if in writing and sent to the Guarantor postage prepaid, certified, registered, or U.S. express mail, return receipt requested, addressed to the Guarantor at \_\_\_\_\_.

8. All rights and remedies afforded to BHA, by reason of this Guaranty, the Development Agreement, the Ground Lease, or by law, are separate and cumulative and the exercise of one shall not in any way limit or prejudice the exercise of any other such rights or remedies. No delay or omission by BHA in exercising any such right or remedy shall operate as a waiver thereof. No waiver of any rights and remedies hereunder, and no modification or amendment hereof, shall be deemed made by BHA unless in writing and duly signed by BHA. Any such written waiver shall apply only to the particular instance specified therein and shall not impair the further exercise of such right or remedy or of any other right or remedy of BHA and no single or partial exercise of any right or remedy hereunder shall preclude other or further exercise thereof or any other right or remedy.

9. The Guarantor represents and warrants that it has a financial interest in the Developer/Owner, that it has examined or has had an opportunity to examine documents referred to herein, that it has full power, authority and legal right to execute and deliver this Guaranty, and that this Guaranty is a binding legal obligation of the Guarantor. The Guarantor represents and warrants that, at the time of the execution and delivery of this Guaranty, there is no litigation pending or to the best of the Guarantor's knowledge, threatened against the Guarantor, and no other fact or circumstance which exists, which would diminish or negate the liability of the Guarantor to BHA hereunder, or materially impair its ability to perform its obligations, and neither execution nor delivery of this Guaranty or compliance with the terms hereof will conflict with, or constitute a breach of or default under any agreement or instrument to which the Guarantor may be a Party. The financial statements of Guarantor heretofore provided to BHA are, as of the date specified therein, complete and correct in all material respects, fairly present the financial condition of the Guarantor, and are prepared by financial professionals in a consistent manner.

10. Until such time as this Guaranty shall have been terminated, the Guarantor shall provide to BHA on each anniversary date hereof its financial statements in such form and detail as may be reasonably requested by BHA. The Guarantor also agrees to provide BHA with financial statements at such other times as may be reasonably requested by BHA.

11. If any provision or part of any provision contained in this Guaranty shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, or the remaining part of the affected provision of this Guaranty, but this Guaranty shall be construed as if such invalid, illegal or unenforceable provision or part hereof had never been contained herein, but only to the extent it is invalid, illegal or unenforceable.

12. This Guaranty shall inure to the benefit of, and be enforceable by, BHA, its successors and assigns, and shall be binding upon, and enforceable against, the Guarantor and its successors and assigns.

13. This Guaranty shall not create any rights in any surety under payment and performance bonds, among the surety, if any, the Developer/Owner, the general contractor, and BHA, with respect to the Project, either as a third Party beneficiary, or in any other manner, it being understood and agreed that this Guaranty is intended for the sole benefit of BHA, or such other person or entity as BHA may designate in its sole discretion.

14. Guarantor agrees that no shareholder owning more than ten percent (10%) of the issued and outstanding shares in Guarantor shall transfer all or any part of its interest in Guarantor, by operation of law or otherwise, without the prior written consent of BHA. A transfer of stock in the Guarantor, in whole or in part, or any other significant change in the ownership of such stock or in the relative distribution thereof, or with respect to the persons in control of the Guarantor or the degree thereof, or by any other method or means, whether by increased capitalization, merger with another corporation, corporate or other amendments, issuance of new or additional stock or classification of stock or otherwise, shall be deemed a transfer with respect to this covenant. The term "**transfer**" shall include

a sale, assignment, lease, pledge or other encumbrance and a transfer in any other form of the stock or interest therein or limitation thereon. Notwithstanding the foregoing, the term “**transfer**” shall not include transfers among existing shareholders or transfers for estate planning purposes to immediate family members or trusts for the benefit of immediate family members. Guarantor agrees to notify BHA promptly of any such proposed transfer and to obtain written approval thereof from BHA before such transfer is completed and before the person proposing to make such a transfer executes or enters into any binding obligation to make such a transfer.

15. This Guaranty is delivered and made in the Commonwealth of Massachusetts and shall be construed under the laws of the Commonwealth of Massachusetts.

16. Whenever the singular number is used herein and when required by the context, the same shall include the plural, and the masculine, feminine and neuter genders shall each include the others.

17. Notwithstanding anything to the contrary herein contained, this Guaranty shall terminate and be of no further force and effect on the date and in accordance with the provisions of **Section 3** above.

**IN WITNESS WHEREOF**, the Guarantor has executed and ensealed this Guaranty on the date first above written.

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_

GUARANTOR:

By: \_\_\_\_\_ (SEAL)

Name:

Title:

## DEVELOPMENT AGREEMENT

between

**BOSTON HOUSING AUTHORITY**

**And**

**DEVELOPER**

### EXHIBIT E

#### MILESTONES

Milestone	Project
<b>Master Plan Submission Milestone.</b> The Developer shall obtain approval of the BHA of a master plan for the Project.	
<b>Investor Commitment.</b> Developer shall submit to the BHA, the commitment letter from the final investor. The identity of the investor and the criteria by which the final investor has been selected shall conform in all respects to the provisions of Section 5.06.	
<b>Tax Credit Application Milestone.</b> Developer shall submit to the BHA documents or information required to obtain the allocation for LIHTCs. The investor selected and the selection criteria shall conform in all respects to the provisions of Section 5.06.	5 business days prior to the applicable deadline of DHCD
<b>Limited Entity Agreement Milestone.</b> Developer shall present a draft of the Limited Entity Agreement to the BHA for review and approval to govern the ownership and operation of the Project.	
<b>Selection of General Contractor Milestone.</b> Developer shall solicit and select a general contractor according to standards approved by the BHA.	
<b>Other Financing Milestone.</b> If additional financing from sources (other than or in addition to, loans or grants from the BHA and equity), is	no later than 5 days prior to submission

Milestone	Project
required to complete the Project and other work for which the Developer is responsible, Developer shall submit to the BHA for the BHA's approval a commitment letter from qualified lender(s) selected by Developer and reasonably acceptable to the BHA.	of the Proposal
<b>Proposal Milestone.</b> Developer shall submit to the BHA for approval, a Proposal and a Term Sheet.	
<b>Closing Milestone.</b> The Developer shall execute all project financing documents and such other documents as may be required by the BHA and other lenders necessary to closing the financing on the Project.	
<b>Construction Completion Milestone.</b> Developer shall complete construction for the Project and all other work for which Developer is responsible, no later than:	
<b>Lease-up and Sales Milestone.</b> Developer shall lease up the housing units to eligible families or individuals in order to comply with the provisions of the Management Plan, the Limited Entity Agreement or Section 42 of the Code (whichever is applicable).	
<b>Resident Employment Milestone.</b> Developer shall prepare, and submit to the BHA for review and approval, a plan to implement the Resident Employment Requirements.	

**DEVELOPMENT AGREEMENT**

**between**

**BOSTON HOUSING AUTHORITY**

**And**

**DEVELOPER**

**EXHIBIT F**

**HUD CONTRACTOR/CERTIFICATIONS**

**SUBGRANTEE/CONTRACTOR/SUBCONTRACTOR  
CERTIFICATIONS AND ASSURANCES**

The following certifications must be made by all subgrantees, contractors, and subcontractors.

The subgrantee, contractor, or subcontractor executing this certification hereby assures and certifies that it will comply with all of the applicable requirements of the following, as the same may be amended from time to time:

(1) The Fair Housing Act (42 U.S.C. 3601-19) and regulations pursuant thereto (24 CFR part 100); Executive Order 11063 (Equal Opportunity in Housing) and regulations pursuant thereto (24 CFR part 107); and the fair housing poster regulations (24 CFR part 110);

(2) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and regulations pursuant thereto (24 CFR part 1) relating to non-discrimination in housing;

(3) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and regulations issued pursuant thereto (24 CFR part 146);

(4) The prohibitions against discrimination on the basis of disability (including requirements that the Grantee make reasonable modifications and accommodations and make units accessible) under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations issued pursuant thereto (24 CFR part 8); the Americans with Disabilities Act (42 U.S.C. 12101 et seq. and its implementing regulation at 28 CFR part 36; and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151) and regulations issued pursuant thereto (24 CFR part 40);



(5) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) and its implementing regulation at 24 CFR part 135;

(6) Executive Orders 11246, 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the Grantee must make efforts to encourage the use of minority and, women's business enterprises in connection with funded activities;

(7) Subgrantees only must provide drug-free workplaces in accordance with the Drug-Free Workplace Act of 1988 (41 U.S.C. 701), and HUD's implementing regulations at 24 CFR part 24, subpart F. Each subgrantee must complete a Certification for a Drug-Free Workplace (Form HUD-50070) in accordance with 24 CFR 24.630.

(8) The following labor standards: Davis-Bacon or HUD-determined wage rates apply to development or operation of revitalized housing to the extent required under Section 12 of the U.S. Housing Act of 1937. In the case of demolition, Davis-Bacon wage rates apply to demolition followed by construction on the site; HUD-determined wage rates apply to followed only by filling in the site and establishing a lawn. Under Section 12, the wage rate requirements do not apply to individuals who: perform services for which they volunteered; do not receive compensation for those services or are paid expenses, reasonable benefits, or a nominal fee for the services; and are not otherwise employed in the work involved (24 CFR part 70). In addition, if other Federal programs are used in connection with your HOPE VI or public housing Program, labor standards requirements apply to the extent required by the other Federal programs, on portions of the project that are not subject to Davis-Bacon rates under the Act.

9. The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, et.seq.) and implementing regulations at 24 CFR parts 35 and 965 (subpart H) and section 968.100(k), as amended. Unless otherwise provided, it will be responsible for testing and abatement activities, if applicable.

10 (a) Nonprofit contractors or subcontractors will comply with the requirements, policies and standards of:

(i) 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations);

(ii) A-122 (Cost Principles for Non-Profit Organizations); and

(iii) the audit requirements of 24 CFR 84.26.

(b) For-profit contractors or subcontractors will comply with the requirements, policies and standards of:

(i) 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations); and

(ii) the contract cost principles and procedures set forth in 48 CFR part 31.



- (iii) the audit requirements of 24 CFR 84.26.
- (c) Contractors or subcontractors that are States, local governments, and Federally Recognized Indian Tribal Governments will comply with the requirements, policies, and standards of:
- (i) 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments),
- (ii) the cost principles of OMB Circular A-87 (Cost Principles for State, Local and Indian Tribal Governments), and
- (iii) the audit requirements of 24 CFR 85.26.
- (11) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and government-wide implementing regulations at 49 CFR part 24.
- (12) Section 319 of Public Law 101-121, which prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government, and implemented for HUD at 24 CFR part 87, as the same may be amended from time to time. The contractor/subcontractor will disclose promptly any commitment or expenditure of non-appropriated funds for lobbying activities if those activities would be prohibited if paid with appropriated funds.
- (13) The following contract provisions must be placed in all contracts of the Grantee pursuant to 24 CFR 85.36 (i). Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.
- (a) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)
- (b) Termination for cause and for convenience by the Grantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of Ten Thousand and 00/100 Dollars (\$10,000.00))
- (c) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of Ten Thousand and 00/100 Dollars (\$10,000.00) by Grantees and their contractors)
- (d) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts for construction or repair)

(e) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of Two Thousand and 00/100 Dollars (\$2,000.00) awarded by Grantees when required by Federal grant program legislation)

(f) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by Grantees in excess of Two Thousand and 00/100 Dollars (\$2,000.00), and in excess of Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) for other contracts which involve the employment of mechanics or laborers)

(g) Notice of awarding agency requirements and regulations pertaining to reporting.

(h) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(i) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(j) Access by the Grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination excerpts, and transcriptions.

(k) Retention of all required records for three years after Grantees make final payments and all other pending matters are closed.

(l) Compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts and subcontracts of amounts in excess of One Hundred Thousand and 00/100 Dollars (\$100,000.00)).

(m) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

(n) The conflict of interest provision of 24 CFR Part 85 and 24 CFR Part 941.

The information contained in this certification is true and accurate, to the best of my knowledge.

---

Signature of Authorized Certifying Official

---

Title

---

Organization Date

#### WARNING

Section 1001 of the Title 18 of the United States Code (Criminal Code and Criminal Procedure, 72 Stat.967) applies to this certification. 18 U.S.C. 1001, among other things, provides that whoever knowingly, and willfully makes or uses a document or writing knowing the same to contain any false, fictitious or fraudulent statement or entry, in any matter within jurisdiction of any department or agency of the United States, shall be fined no more than Ten Thousand and 00/100 Dollars (\$10,000.00) or imprisoned for not more than five years, or both.

INFORMATIONAL COPY

**DEVELOPMENT AGREEMENT**

**between**

**BOSTON HOUSING AUTHORITY**

**And**

**DEVELOPER**

**EXHIBIT G**

**FORM OF CONTRACTOR CONSENT**  
**(Contractor, Engineer, Architect, etc.)**

**CONSENT AND AGREEMENT OF GENERAL CONTRACTOR**

The undersigned Contractor hereby consents to the execution, delivery and performance of the Assignment of Project Documents (the “**Assignment**”) as security for the performance by Developer of all of Developer’s obligations, responsibilities, liabilities and undertakings under the Development Agreement, entered into by the Developer and BHA to which the contracts which are the subject of this Form of Contractor Consent pertain, and agrees to recognize, honor and be bound by the terms, provisions and conditions of this Assignment. The Contractor agrees: (i) to furnish to BHA copies of all written notices given by Contractor to Developer with respect to any failure of Developer to perform under the Contractor’s Project Document dated [REDACTED], between Developer and the undersigned (the “**Contract**”), and, anything in the Contract to the contrary notwithstanding, Contractor agrees to take no action against the Developer for breach of its obligations under the Contract unless and until notice of the claimed breach has been given to BHA and BHA has been given a reasonable opportunity to cure, not to exceed thirty (30) days, in both monetary and non-monetary cures, any such breach after receipt of said notice from the Contractor; (ii) to accept any such performance by BHA as performance by the Developer; and (iii) so long as BHA commences to cure or cause to be cured any such breach, and the cure is carried on with due diligence (or in the case of a breach of Developer’s payment obligations to the Contractor, so long as BHA pays or causes to be paid any sums payable from time to time by Developer to Contractor under the Contract within a reasonable time, not to exceed thirty (30) days, in both monetary and non-monetary cures after the same become due), then Contractor will continue to meet its obligations fully under the Contract and will not terminate the Contract or suspend work thereunder. The Contractor acknowledges and agrees that BHA shall have no obligation to commence or continue the cure of any such breach or to pay or perform any obligation of Developer to the Contractor except to the extent provided in the foregoing Assignment. Other than all sums necessary to cure the monetary default of the Developer, if BHA elects to cure such default and to direct the Contractor to continue performance on BHA’s behalf, as provided for herein, the Contractor waives all recourse against BHA for all claims, whether for amounts due or otherwise, which it may have against Developer first accruing

or arising prior to any event of default under any of the Loan Documents between Developer and BHA.

The Contractor hereby expressly waives all provisions in the Contract which would impair, hinder or prevent the making of the Assignment by Developer or the enforcement thereof by BHA.

The Contractor hereby represents and warrants to BHA that the Contract is in full force and effect on the date hereof and has not been amended or modified and that there are no uncured breaches thereof by Contractor, nor no known breaches thereof by the Developer.

The Contractor further agrees that:

1. Without the prior written approval of BHA which shall not be unreasonably withheld, conditioned or delayed, the Contractor will not (i) enter into any agreement (or otherwise accept or permit any communication or action by Developer which would have the effect of) terminating or amending or modifying the terms, provisions or conditions of the Contract in any material respect, or (ii) initiate or agree to any change orders or otherwise take any action which would alter the work to be performed under the Contract.

2. BHA shall have an absolute right to use, copy all drawings, plans and/or specifications and other materials prepared by or for the Contractor with respect to the work to be performed pursuant to its Project Document, without charge, cost or expense to BHA, except for the cost of copying, for which the BHA shall reimburse the Contractor, if any event of default shall occur under any of the Loan Documents.

3. Upon BHA's request, Contractor shall, within a reasonable time, provide to lender a Schedule of Values, on AIA form G-702 and G-703, updated through the date of such request, showing to the best of the Contractor's knowledge, the value of all work in place furnished by the Contractor under the Project Document.

4. All notices, requests, demands, approvals, or other communications given hereunder or in connection with this Agreement shall be in writing and shall be deemed given when delivered by hand or sent by registered or certified mail, return receipt requested, addressed as follows:

Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

BHA: Administrator  
Boston Housing Authority  
52 Chauncy Street  
Boston, MA 02111

with a copy to: General Counsel  
Boston Housing Authority  
52 Chauncy Street, 10<sup>th</sup> Floor  
Boston, MA 02111

5. This Consent and Agreement of Contractor shall bind the Contractor and its representatives, successors and assigns, and shall inure to the benefit of BHA and BHA's successors and assigns.

6. All capitalized terms used herein shall have the meanings ascribed such terms in the Development Agreement unless otherwise expressly defined herein.

7. This Consent and Agreement of Contractor shall survive the expiration or termination of the Development Agreement.

Executed as an instrument under seal this \_\_\_\_ day of \_\_\_\_, 2017.

CONTRACTOR:

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DEVELOPMENT AGREEMENT**

**between**

**BOSTON HOUSING AUTHORITY  
And  
DEVELOPER**

**EXHIBIT H**

**MAP OF SURROUNDING NEIGHBORHOOD**  
(See Attached)

INFORMATIONAL COPY

**DEVELOPMENT AGREEMENT**

**Between**

**BOSTON HOUSING AUTHORITY**

**And**

**DEVELOPER**

**EXHIBIT I**

**DESCRIPTION OF PROJECT**

INFORMATIONAL COPY



**DEVELOPMENT AGREEMENT**

**Between**

**BOSTON HOUSING AUTHORITY**

**And**

**DEVELOPER**

**EXHIBIT J**

**MEMORANDUM OF AGREEMENT FOR RESIDENT PARTICIPATION IN  
BOSTON HOUSING AUTHORITY-AFFILIATED  
MIXED FINANCE DEVELOPMENTS**

INFORMATIONAL COPY

**DEVELOPMENT AGREEMENT**

**Between**

**BOSTON HOUSING AUTHORITY**

**And**

**DEVELOPER**

**EXHIBIT K**

**BOUNDARY SURVEY AND SITE PLAN**

INFORMATIONAL COPY

**DEVELOPMENT AGREEMENT**

**Between**

**BOSTON HOUSING AUTHORITY**

**And**

**DEVELOPER**

**EXHIBIT L**

**BHA MINORITY AND WOMEN PARTICIPATION PROVISION**

INFORMATIONAL COPY

**DEVELOPMENT AGREEMENT**

**Between**

**BOSTON HOUSING AUTHORITY**

**And**

**DEVELOPER**

**EXHIBIT M**

**BHA RESIDENT EMPLOYMENT PROVISION**

INFORMATIONAL COPY

**APPENDIX K**

**MARY ELLEN MCCORMACK**

**GROUND LEASE**

**Dated as of \_\_\_\_\_**

**by and between**

**BOSTON HOUSING AUTHORITY**

**Landlord**

**and**

**[INSERT NAME]**

**Tenant**

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## EXHIBITS

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Exhibit C	Budget
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## GROUND LEASE

### ARTICLE I REFERENCE DATA

#### 1.1. Subject Referred to:

Each reference in this Lease to any of the following subjects shall be construed to incorporate the data stated for that subject in this **Section 1.1**.

**Commencement Date of this Lease:** As of \_\_\_\_\_

**Premises:** The land in Boston, Massachusetts shown on **Exhibit A** (including all improvements made or to be made thereto by Landlord or its affiliate), together with all necessary easements for utilities, sewer and drainage required for the use of the Premises.

**Landlord:** Boston Housing Authority ("BHA"), a public body politic and corporate, organized and existing under Chapter 121B of the General Laws of Massachusetts Chapter 88 of the Acts of 1989 and a "public housing agency" as defined in the United States Housing Act of 1937 (42 U.S.C. §1437 et seq., as amended).

**Tenant:** [INSERT NAME]

**Original Address of Tenant:** [INSERT ADDRESS]

**Term:** This Lease shall be for a ninety-nine (99) year term, commencing on the Commencement Date.

**Project:** The development, construction, rehabilitation, ownership, operation, maintenance and management of \_\_\_\_\_ units of housing on the Premises ("**Units**"), of which \_\_\_\_\_ Units (the "**Project-Based Voucher Units**") will be subject to that certain Housing Assistance Payments Contract between BHA and Tenant (the "**HAP**") and Section 8 of the Act (as implemented by 24 CFR part 983) (collectively with the HAP, the "**Project-Based Voucher Requirements**") and \_\_\_\_\_ Units (the "**Market Units**") will be market-rate units. The remaining \_\_\_\_\_ Units (the "**LIHTC Units**") shall be subject to Section 42 of the U.S. Internal Revenue Code (the "**Code**"). The Project shall be financed in part by such sources more particularly described in the budget set forth on **Exhibit C**.

#### 1.2. Exhibits and Definitions.

Exhibits attached at the end of this Lease are incorporated in this Lease by this reference and are to be construed as a part of this Lease. All terms in this Lease that have an initial capital letter are either defined within the text of this Lease, or in **Exhibit B** attached to this Lease.

## ARTICLE II PREMISES AND TERM

### 2.1. Premises.

For and in consideration of the Tenant's agreement to use, operate, and maintain the Premises as permitted by this Lease, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Landlord hereby leases and demises to the Tenant and the Tenant hereby leases from the Landlord, subject to and with the benefit of the terms, covenants, conditions, and provisions of this Lease, the Premises.

### 2.2. Term.

The Premises are hereby leased unto the Tenant and the Tenant's successors and permitted assigns for the Term of this Lease unless sooner terminated in accordance with the provisions herein contained.

## ARTICLE III RENT

**3.1. Base Rent.** Base Rent shall be \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00) per annum. The Landlord acknowledges receipt of \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00) as "**Base Rent**" during the Term hereof.

### 3.2. Additional Rent.

In order that the Base Rent shall be absolutely net to the Landlord, the Tenant covenants and agrees to pay, as "**Additional Rent**," without notice or demand and without set-off, abatement, suspension or deduction, all taxes, payment in lieu of taxes, betterment assessments, water and sewer rents and charges, liens, insurance, maintenance, repairs, utilities charges, all other Operating Expenses, and all other customary costs, general and special, which are due and payable during the Term hereof at any time imposed or levied against the Premises; provided, however, that the term Additional Rent shall not include any income tax, capital levy, estate, succession, inheritance, transfer, or similar taxes of the Landlord, or any franchise tax imposed upon the Landlord, or any income, profits, or revenue tax, assessment, or charge imposed upon the rent received by the Landlord under this Lease by any governmental authority.

The Tenant will furnish to the Landlord, upon request once per year concurrently with the Landlord's annual review of the Tenant's financial statements, a proof of payment of all items referred to in this **Section 3.2** that are payable by the Tenant; provided, that the Tenant will in addition furnish to the Landlord proof of payment of any taxes or payments in lieu thereof and proof of payment of insurance premiums promptly after demand therefor.

In the event the Tenant fails to make any payment referred to in this **Section 3.2** when due, the Landlord shall have the right after five (5) calendar days' notice to Tenant to make any such payment on behalf of the Tenant and charge the Tenant as Additional Rent therefor, plus the Base Interest Rate.

Without limiting the foregoing, Additional Rent shall include without limitation the following:

### 3.2.1. Real Estate Impositions.

The Tenant shall pay, directly to the authority charged with the collection thereof, payments in lieu of taxes thereof in accordance with the provisions of M.G.L. Chapter 121A (the “**121A Agreements**”), and thereafter each installment of all public, special, or betterment assessments levied or assessed by or becoming payable to the City of Boston or any governmental authority having jurisdiction of the Premises, for or in respect of the Premises and the Project constructed thereon (including payments in lieu of taxes pursuant to a cooperation agreement or so-called 6A contract payments pursuant to any agreement with the City of Boston or the Boston assessor of taxes (“**PILOT**”), as well as real estate taxes upon the expiration of the PILOT, and all of the foregoing taxes and installments of assessments, such taxes and installments of assessments being hereinafter together referred to as “**Real Estate Impositions**”) for each tax or installment period wholly included in the Term, all such payments to be made not less than five (5) business days prior to the last date on which the same may be paid without interest or penalty, and Tenant’s obligation herein to make payment of Real Estate Impositions directly to the taxing authority, shall apply to any fraction of a tax period or installment period included in the Term at the beginning or end thereof.

The Tenant, at the Tenant’s sole cost and expense, in the Tenant’s own name or, with the prior approval of the Landlord, which approval shall not be unreasonably withheld, delayed, or conditioned, in the name of the Landlord, may contest the validity or amount of any Real Estate Imposition relating to all or any portion of the Premises (if less than the entire Premises), in which event the Tenant may make such payment under protest or if postponement of such payment will not jeopardize the Landlord’s or the Tenant’s title to the Premises, or subject the Landlord to the risk of any criminal liability or civil penalty or other liability, the Tenant may postpone the same.

As may be necessary or desirable, the Tenant or the Landlord, as applicable, upon the request of the other party, shall use its respective good faith, reasonable efforts to assist in any such proceeding to contest the validity or amount of any Real Estate Imposition. Either party paying any Real Estate Imposition shall be entitled to recover, receive, and retain for the paying party’s own benefit all abatements and refunds of such Real Estate Imposition, unless it has been previously reimbursed by the other party.

Nothing contained in this **Section 3.2.1**, however, shall be construed to allow any such contested Real Estate Imposition to remain unpaid for a length of time that shall permit the Premises, or any part thereof, to be sold by any governmental authorities for the non-payment of such Real Estate Imposition. The Tenant shall promptly furnish to the Landlord copies of all notices, appeals, pleadings, motions, and orders in any proceedings commenced with respect to such contested Real Estate Imposition.

The Tenant agrees to save the Landlord harmless from all costs and expenses incurred on account of the Tenant’s participation in such proceedings or as a result of the Tenant’s failure to pay Real Estate Impositions and other related charges with respect to the Premises. The Landlord, without obligating itself to incur any costs or expenses in connection with such proceedings, shall cooperate with the Tenant with respect to such proceedings so far as reasonably necessary. Neither party shall discontinue any abatement proceedings begun by it without first giving the other party written notice of the discontinuing party’s intent so to do and reasonable opportunity to be

substituted in such proceedings. The Landlord shall promptly furnish to the Tenant a copy of any notice of any Real Estate Imposition received by the Landlord.

### **3.2.2. Utilities.**

The Tenant shall pay or cause to be paid all charges for water, gas, sewer, electricity, light, heat or power, telephone, or other service used, rendered, or supplied to the Tenant in connection with the Premises and/or the Project and shall not contract for the same in the Landlord's name; provided, however, that neither the Landlord nor the Tenant shall have responsibility hereunder for the payment of utilities supplied by the respective providers directly to individual Occupants for such Occupant's use in connection with the occupancy of their individual Units.

### **3.2.3. Other.**

The Tenant covenants to pay and discharge, when the same shall become due, as Additional Rent, all other amounts, liabilities, and obligations that the Tenant assumes or agrees to pay or discharge pursuant to this Lease, and any other such payment for which the Landlord has not expressly assumed responsibility hereunder, together with every fine, penalty, interest, and cost that may be added for nonpayment or late payment thereof; and, in the event of any failure by the Tenant to pay or discharge the foregoing, the Landlord shall have all the rights, powers, and remedies provided and as limited herein in the case of nonpayment of rent, and additionally, the Landlord shall be entitled to pay the same, and collect the amount thereof from the Tenant, as Additional Rent, plus the Base Interest Rate.

## **ARTICLE IV INDEMNITY, LIENS, AND INSURANCE**

### **4.1. Indemnification**

The Tenant agrees to pay and to defend, indemnify, and hold harmless the Landlord from and against any and all liabilities, losses, damages, causes of action, suits, claims, demands, judgments, costs, and expenses of any kind or any nature whatsoever (including, without limitation, remediation costs, environmental assessment costs, governmental compliance costs, and reasonable expert's and attorney's fees and expenses), known or unknown, foreseen or unforeseen, which may at any time be imposed upon, incurred by, or asserted or awarded against the Landlord or its employees, agents, officers, shareholders, directors, or other persons serving in an advisory capacity to any of them (such as monitoring committee members) or against the Project and/or Premises, or any portion thereof, arising from: (a) any injury to, death of, or claim of injury to or death of any person or any damage to, loss of, or claim of damage to or loss of property on the Premises, within the Project, or on adjoining sidewalks, streets, or ways, in each case arising out of the use, possession, ownership, condition, or occupation of the Premises, the Project, or any part thereof by the Tenant (but not of any property not expressly referred to above), from and after the date hereof, except for those that result from the acts or failures to act of the Landlord and except for third party bodily injury or property damage claims asserted after the date hereof but arising prior to the date hereof; or (b) violation by the Tenant, the Tenant's employees, agents, or Occupants, or invitees of any of them of any obligation of the Tenant under this Lease, any Permitted Mortgage, and/or any one or more of the Governing Documents, and/or any restriction, statute, law, ordinance, or regulation, including without limitation, restrictions, statutes, laws,

ordinances, regulations, or any other Legal Requirement relating to the presence, release, or threat of release of oil or hazardous substances in each case affecting the Premises or the Project or any part thereof or the ownership, occupancy, or use thereof from and after the date hereof.

The Landlord shall give the Tenant prompt notice of any written claim made or suit instituted against the Landlord relating to any matter that would result in indemnification pursuant to this **Section 4.1**, but the Landlord's failure to give such prompt notice to the Tenant shall not release the Tenant from performing the Tenant's obligations under this **Section 4.1**. The foregoing indemnification shall not be construed as creating any rights in or conferring any rights to any third parties.

The obligations of the Tenant under this **Section 4.1** shall survive the expiration or any earlier termination of the Term of this Lease.

#### **4.2. Liens.**

The Tenant shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons, firms, and corporations doing any work, furnishing any materials or supplies or renting any equipment to the Tenant or any of its contractors or subcontractors in connection with the reconstruction, furnishing, repair, maintenance, or operation of the Premises and in all events will bond or cause to be bonded, with surety companies reasonably satisfactory to the Landlord, or pay or cause to be paid in full forthwith, any mechanic's, materialmen's, or other lien or encumbrance that arises, whether due to the actions of the Tenant, or any person under control of the Tenant against the Premises other than Permitted Mortgages pursuant to **Section 9.1** hereof.

The Tenant shall have the right to contest any such lien or encumbrance by appropriate proceedings that shall prevent the collection of or other realization upon such lien or encumbrance so contested, and the sale, forfeiture, or loss of the Premises and/or the Project to satisfy the same, provided that such contest shall not subject the Landlord to the risk of any criminal liability or civil penalty, and provided further that the Tenant shall give such reasonable security as may be requested by the Landlord to insure payment of such lien or encumbrance and to prevent any sale or forfeiture of the Premises and/or the Project by reason of such nonpayment, and the Tenant hereby indemnifies the Landlord for any such liability or penalty. Upon the termination after final appeal of any proceeding relating to any amount contested by the Tenant pursuant to this **Section 4.2**, the Tenant shall immediately pay any amount determined in such proceeding to be due, and in the event the Tenant fails to make such payment, the Landlord shall have the right after five (5) calendar days' notice to the Tenant to make any such payment on behalf of the Tenant and charge the Tenant therefor.

Nothing contained in this Lease shall be construed as constituting the consent or request of the Landlord, express or implied, to or for the performance of any labor or services or the furnishing of any materials for construction, alteration, addition, repair or demolition of or to the Premises or of any part thereof. Notice is hereby given that the Landlord will not be liable for any labor, services, or materials furnished or to be furnished to the Tenant, or to anyone holding the Premises, the Project, or any part thereof through or under the Tenant, and that no mechanic's or other liens for any such labor, services, or materials shall attach to or affect the interest of the Landlord in and to the Premises, the Project, or any part thereof.

The obligations of the Tenant under this **Section 4.2** shall survive the expiration or any earlier termination of this Lease.

#### **4.3. Insurance Requirements.**

Beginning on the Commencement Date and continuing until the expiration or earlier termination of the Term, the Tenant shall at all times carry, such liability, worker's compensation, property, and other insurance coverage with respect to the Premises, the Project, or any part thereof, and any other insurable property and equipment therein or thereon (all of the above known as “**Insurable Property**”) in at least the following amounts and extents of coverage, or such other coverages and terms as the Landlord accepts and approves:

(a) Commercial general liability insurance applicable to the insurable Premises for death, bodily injury, and personal injury in amounts of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate. The commercial general liability insurance shall include coverage for losses arising from underground explosion and collapse. Any or all of these requirements may be expanded in scope or increased in amount, as the case may be, from time to time to reflect changes in amounts of such insurance carried by owners of comparable properties in the City of Boston or as may be required by the Landlord. The policy affording such coverage shall name the Landlord and other parties designated by the Landlord as additional insureds.

(b) Commercial automobile liability insurance covering all owned or hired and non-owned automobiles for bodily injury and property damage in the amount of One Million Dollars (\$1,000,000) per accident. This requirement may be expanded in scope or increased in amount, as the case may be, from time to time to reflect changes in amounts of such insurance carried by owners of comparable properties in the City of Boston or as may be required by the Landlord. The policy affording such coverage shall name the Landlord and other parties designated by the Landlord as additional insureds.

(c) Workers' compensation at the statutory limits and as required by law and employer's liability insurance in the amount of One Million Dollars (\$1,000,000) for bodily injury for each accident, One Million Dollars (\$1,000,000) for bodily injury by disease for each employee, and One Million Dollars (\$1,000,000) for bodily injury by disease in the aggregate in respect of any work performed by the Tenant's employees, contractors, and subcontractors on or about the Premises and/or the Project.

(d) Umbrella liability insurance in the amount of Ten Million Dollars (\$10,000,000) per occurrence, covering losses in excess of the primary commercial general liability, commercial automobile liability, and employer's liability coverages, or such other amount as may reasonably be required by the Landlord. If part of a master program, subject to annual aggregate limits, the umbrella limit shall be on a per-location basis.

(e) “All Risk Property Insurance” covering all risks of physical loss or damage to any of the Premises on a full replacement cost basis sufficient to avoid any requirement of co-insurance by the Tenant for the “full replacement value” thereof. Replacement cost values shall be determined annually by a method reasonably acceptable to the insurance company providing



coverage, provided that the Tenant shall review the amount of such coverage annually and shall adjust the amount of such coverage to take into account inflation in the replacement cost of the Premises. Coverage shall be provided for increased cost of construction, demolition, and building ordinance exposure/requirements. Such insurance shall have attached thereto a clause making the loss under the all-risk property insurance payable to the Landlord and the Tenant, jointly. The Landlord agrees to endorse any checks for such insurance proceeds within fourteen (14) calendar days of a request therefore from the Tenant setting forth the proposed uses for such funds.

(f) Flood insurance if at any time the Premises are located in any federally designated "special hazard area" (including any area having special flood, mudslide and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary map or a Flood Insurance Rate Map published by the Federal Emergency Management Agency as Zone A, AO, A1-30, AE, A99, AH, VO, V1-30, VE, V, M or E) in an amount equal to the full replacement cost or the maximum amount then available under the National Flood Insurance Program.

(g) During any development or construction periods, the Tenant or the Tenant's developer shall: carry builder's risk insurance covering any construction projects commenced on the Premises or in connection with the Project. Coverage shall be provided on a completed value basis and cover the full insurable replacement cost thereof. Any applicable deductible shall be the Tenant's or the Tenant's developer's sole responsibility.

(h) From and after the date that seventy-five percent (75%) of the Project at the Premises are occupied by any Occupants, rent loss insurance on an all-risk and agreed amount basis, with the amount being sufficient to recover at least the total estimated gross receipts from all sources of income for the Premises, and/or the Project, or any part thereof, including, without limitation, rental income, for a twelve-month period.

(i) The Tenant shall:

(i) Require any contractor (or subcontractor thereof) or professional to carry commercial general liability, commercial automobile liability, workers compensation and employer's liability coverages, and umbrella coverage, with limits, scope of coverage, and other provisions as described above, or such other limits, scope of coverage, and other provisions as may be accepted and approved by the Landlord. Such commercial general liability and commercial automobile liability coverages shall name the Tenant and the Landlord and other parties designated by the Landlord as additional insureds. The Tenant shall obtain and keep on file certificates of insurance that show that the contractor or subcontractor is so insured, and any renewals thereof.

(ii) With respect to any architect, engineer, or other person or entity providing professional services to the Tenant and/or employed in connection with the Premises and/or the Project, or in the construction of other improvements, require such subcontractor to carry professional liability (errors and omissions) insurance in the amount of One Million Dollars (\$1,000,000), or such other amount required by the Landlord, covering acts, errors, or omissions committed in, or arising out of, the provision of services performed in connection with the Project. In addition, the Tenant shall require any architect or engineer providing services to the Tenant in connection with the Project or in the construction of other improvements to carry insurance for valuable papers and records computations, field notes, and other data pertinent to the Project or

other construction in the amount of One Hundred Thousand Dollars (\$100,000), or as required by the Landlord. The Tenant shall obtain and keep on file certificates of insurances that show that the architect, engineer or other such professional is so insured. Professional liability coverage inclusive of errors and omissions and valuable papers coverage shall remain in effect for a period of two (2) years after completion of the Project or other construction. The Tenant shall obtain and keep on file certificates of insurance that show that the contractor or subcontractor is so insured, and any renewals thereof.

(j) The minimum coverages stated in this **Section 4.3** shall be reviewed annually by the Landlord and the Tenant and shall be increased at such review if the Landlord determines such increase is necessary to reflect inflation or changes in the nature or degree of risks insured.

#### **4.4. Insurance Provisions.**

Insurance maintained by the Tenant and its contractors and subcontractors pursuant to the requirements of **Section 4.3** shall:

(a) be provided by standard policies, written by financially sound and responsible insurance companies rated at least A/VI or better in Best's Rating Guide and authorized to do business in the Commonwealth of Massachusetts, and otherwise acceptable to the Landlord.

(b) be written to become effective on the Commencement Date and shall be continued in full force and effect for the Term.

(c) contain terms providing that any loss covered by such insurance may be adjusted with the Tenant and the Landlord, but shall be payable to the holder of any leasehold mortgage, who shall agree to receive and disburse all proceeds of such insurance.

(d) include a provision in each respective policy document stating that the insurer will waive all rights of recovery, under subrogation or otherwise, against the Landlord and all other parties designated by the Landlord.

**4.5. Additional Insurance Provisions.** The following provisions shall apply to required insurance coverages described above if commercially available:

(a) The Tenant shall give written notice of any cancellation, non-renewal, or material modification of any required coverages to the Landlord and any mortgagee under a Permitted Mortgage immediately upon the Tenant's receipt of notification of such cancellation, non-renewal, or material modification. For purposes of this **subsection 4.5(a)**, a "material" modification shall include, but not be limited to, any change in the dollar amount of coverage, the circumstances to which the coverage applies, any change in the Landlord's or the Landlord's designees' position as additional insured or loss payee and any change in the duration of the coverage.

(b) The Tenant shall deliver certificates of insurance evidencing the existence of all required coverages, together with all endorsements to such policies, as are required



hereunder, including endorsements naming the Landlord and the Landlord's designees, as additional insured thereunder, where applicable on or before the Commencement Date of this Lease. Upon replacement or renewal of any of the coverages required herein, the Tenant shall provide the Landlord with certificates of insurance evidencing continuance of such coverage concurrent with such replacement or renewal.

(c) The Tenant shall provide complete copies of all required insurance policies to the Landlord upon request.

(d) In addition to notifying the Tenant's insurer(s) in accordance with each policy, the Tenant shall provide prompt written notice to the Landlord as soon as reasonably possible of any accident or loss relating to the Premises, the Project, or any part thereof, likely to exceed Twenty-five Thousand Dollars (\$25,000) in 2016 inflation adjusted dollars.

(e) The Landlord's address for purposes of receiving insurance certificates, binders, or notices shall be as follows:

Boston Housing Authority  
Director of Risk Management  
52 Chauncy Street  
Boston, MA 02111

## **ARTICLE V USE, TRANSFER, ASSIGNMENT**

### **5.1. Permitted Uses.**

#### **5.1.1. Permitted Uses of the Premises and Project.**

The Tenant shall throughout the Term continuously use and operate the Premises and the Project only for the following uses, and such other uses as are reasonably and customarily attendant to such uses; provided, however, with such attendant uses, the Landlord has given the Landlord's prior approval:

Construction, development, marketing for lease, and leasing of the Units in a manner that strictly satisfies the requirements of this Lease, the Legal Requirements, and in regard to the Project-Based Voucher Units, also satisfies the Project-Based Voucher Requirements (the "Permitted Uses").

The Tenant covenants, promises and agrees that during the Term the Tenant shall not devote the Units to uses other than those consistent with the Legal Requirements.

#### **5.1.2 Obligation to Construct.**

In connection with such Permitted Uses, the Tenant hereby agrees, covenants, and warrants that the Tenant shall construct the Project, and shall make such alterations, repairs, renovations, and betterments to the Premises as may be necessary to maintain the same in good order, condition, and repair, all at its sole cost and expense, in accordance with the Governing Documents, the

Project Budget, and all Legal Requirements. The Tenant shall perform all work in a good and workmanlike manner, with new and first-class materials and equipment, or comparable recycled materials and equipment, and in conformity with all Legal Requirements, and in accordance with all plans and specifications approved by the Landlord prior to the Commencement Date. In connection with the foregoing, the Tenant shall not make any material amendments, modifications, or any other material alterations to the aforesaid plans and specifications unless the Landlord has approved such, in writing and in advance. The Tenant shall solicit and consider, in good faith, all input of the Landlord in the performance of the Tenant's obligations under this Lease (e.g., inviting the Landlord's staff to participate on teams working on various aspects of the Project, or otherwise soliciting from the Landlord comments and suggestions in regard to the Tenant's obligations, etc.).

Any and all improvements placed in, on, or upon the Premises (including, without limitation, the improvements described in any bill of sale) shall remain the sole and exclusive property of the Tenant, notwithstanding their affixation to, annexation to, or incorporation into the Premises, until the termination of this Lease, at which time title to any such improvements as belong to the Tenant shall vest in the Landlord in accordance with **Section 5.6** below.

**5.1.3 Encroachments.** If any improvement hereafter constructed on the Premises shall (i) encroach upon any setback or any property, street, or right-of-way adjoining the Premises; (ii) violate the provisions of any encumbrance; (iii) hinder or obstruct any easement or right-of-way to which any of the Premises is subject; or (iv) impair the rights of others in, to, or under any of the foregoing, the Tenant shall, promptly after receiving notice or otherwise acquiring knowledge thereof, at the Tenant's election, either (A) obtain from all necessary parties waivers or settlements of all claims, liabilities and damages resulting from each such encroachment, violation, hindrance, obstruction or impairment, whether the same shall affect the Landlord, the Tenant, or both; or (B) take such action as shall be necessary to remove all such encroachments, hindrances, or obstructions and to end all such violations or impairments, including, if necessary, making alterations.

**5.1.4. Prohibited Uses.** Notwithstanding any other provision of this Lease, the Tenant shall not knowingly use the Premises or the improvements thereon, or any part thereof, or knowingly suffer or permit the use or occupancy of the Premises or the improvements thereon or any part thereof by the Tenant's agents, employees, and/or contractors (i) for any unlawful purposes or in any unlawful manner; (ii) in a manner that would violate any of the covenants, agreements, terms, provisions, and conditions of this Lease or otherwise applicable to or binding upon the Premises; and (iii) in a manner that is inconsistent with the operation and/or maintenance of the Project in accordance with the Project-Based Voucher Requirements, the Tax Credit Requirements, and other Legal Requirements.

**5.1.5 Maintenance.**

The Tenant shall, at its own expense during the Term, maintain, repair, and renew the Premises, the improvements, and the alterations so as to keep them in good, clean, and safe condition in all respects, and in compliance with the Legal Requirements. The Tenant shall keep outdoor areas reasonably clean, groomed, and reasonably free of garbage, snow, ice, and obstructions that may pose a danger or create unsanitary or unsightly conditions.

## 5.2. Transfer and Assignment.

The Tenant hereby acknowledges that the Landlord has entered into this Lease because of the Tenant's financial strength, goodwill, ability, and expertise and that, accordingly, this Lease is one that is personal to the Tenant, and the Tenant agrees for itself and the Tenant's successors and permitted assigns in interest hereunder that the Tenant will not, other than by a Permitted Mortgage, directly or indirectly, transfer or assign this Lease or any of the Tenant's rights under this Lease, as to all or any portion of the Premises or the Project, without the prior written consent of the Landlord. Further, the Tenant may not, without the prior written consent of the Landlord, which shall not unreasonably be withheld or delayed, transfer, convey, or assign (i) any interest of a managing member, general partner, or controlling stockholder (any such interest being referred to as a "Controlling Interest") of the Tenant; or (ii) a Controlling Interest in any entity that has a Controlling Interest in the Tenant; or (iii) any other interest in the Tenant, or in any partner or member thereof.

Notwithstanding the foregoing, by the Landlord's execution of this Lease, the Landlord is deemed to have approved, subject to (a) Project-Based Voucher Requirements in regard to the Project-Based Voucher Units and (b) the Tax Credit Requirements in regard to the LIHTC Units: (i) each lease by the Tenant to an eligible Occupant, provided, however, such residential lease is in a form that has been approved by the Landlord under the management agreement and the management plan; (ii) a transfer by the Tenant to a mortgagee under a Permitted Mortgage in compliance with **Article IX**, and to an assignment or other transfer by such mortgagee to a third-party purchaser in connection with a foreclosure sale under the Permitted Mortgage or acceptance by the mortgagee or its designee of a deed-in-lieu of foreclosure under the Permitted Mortgage; (iii) a transfer of a limited partnership interest in the Tenant or of any party that is a limited partner in the Tenant; and (iv) the removal and substitution of the existing general partner with an affiliate of the Tax Credit Investor in accordance with the organizational documents of the Tenant.

Upon the granting of any consent (deemed or otherwise evidenced in writing) by the Landlord with respect to a transfer by the Tenant, if applicable, this Lease shall be binding upon and shall inure to the benefit of the Landlord and the Tenant and their respective heirs, successors, assigns, legal representatives, mortgagees under Permitted Mortgages, and other transferees and, upon the assumption of all of the assignor's obligations by the assignee or transferee, the assignor shall be released from any liability hereunder from and after the date of such transfer and, upon the written request of the assignor, the Landlord shall execute and deliver to the assignor a release agreement in a form reasonably acceptable to the Landlord and assignor to evidence such release. Notwithstanding the foregoing, however, the assignor shall remain fully and unconditionally liable for all obligations of the assignor to have been performed under this Lease on or prior to the date of any such transfer, to the fullest extent that assignor would have been liable under this Lease if such transfer had not occurred. The provisions of this paragraph of **Section 5.2** shall survive each such transfer and the termination of this Lease.

The Tenant shall provide the Landlord with an option to purchase and right of first refusal after the Compliance Period, pursuant to a separate agreement between the Landlord and the Tenant of even date herewith.

### **5.3. Covenants Applicable to the Units.**

**5.3.1. Project-Based Voucher Units.** The Project-Based Voucher Units are subject to, and benefited by, the terms and conditions of the Project-Based Voucher Requirements. The provisions of the Project-Based Voucher Requirements and this **Section 5.3.1** are intended to create a covenant running with the Premises and, subject to the terms and benefits of Project-Based Voucher Requirements, to encumber and benefit the Premises for the entire term of the HAP, as such term may be extended. This **Section 5.3.1** shall be binding upon the Landlord and the Tenant and each of their respective successors, and with respect to the Landlord, the Landlord's assigns, and with respect to the Tenant, the Tenant's permitted assigns, including, without limitation, any entity that succeeds to the Tenant's interest in the Premises and the Project by foreclosure or an instrument in lieu of foreclosure.

### **5.4. Performance of Requirements for LIHTC Units, if applicable.**

The Tenant shall, at the Tenant's expense, perform all of the Tenant's activities on the Premises, the Project, and all parts thereof, in compliance, and shall cause all Occupants of any portion thereof to comply with all applicable laws, ordinances, codes, and regulations and other Legal Requirements affecting the Premises, the Project, and all parts thereof, and the uses, as restricted hereunder, as the same may be administered by authorized governmental officials, and, if applicable, Section 42 of the Code and the Governing Documents. The Landlord shall use the Landlord's good faith, reasonable efforts to assist the Tenant in obtaining all licenses, permits, and other approvals and authorizations required by any governmental authority with respect to any construction or other work to be performed on the Premises, the Project, and all parts thereof, and shall sign all papers and documents at any time needed in connection therewith, including without limitation, such instruments as may be required for the laying out, maintaining, repairing, replacing, and using of water, gas, electric, sewer, telephone, drain, cable television, or other utilities; provided, however, the Landlord is not subject to any cost, expense, fee, or liability in connection therewith. The Tenant shall be entitled without payment to the Landlord for the initial tap or connection fees, to tap into the existing lines, facilities, and systems of applicable electric, gas, cable, water, sewer, sewer treatment, and other utilities serving the Premises and the Project; provided, however, any subsequent tap or connection fees shall be paid solely by the Tenant. The Landlord agrees to use the Landlord's good faith, reasonable efforts to assist the Tenant to obtain waiver, reduction, or deferral, as applicable, of all fees and other charges otherwise payable in connection with obtaining any permits, licenses, easements, and other authorizations required by any governmental authority with respect to any construction or other work to be performed on the Premises in connection with the initial construction of the Project; provided, however, the Landlord is not subject to any cost, expense, fee, or liability in connection therewith.

### **5.5. Other Permitted Encumbrances.**

In addition to any Permitted Mortgage, the Landlord acknowledges that the Tenant has entered or will enter into the encumbrances referenced in **Exhibit E**.

### **5.6. Ownership /Surrender of Premises/Project.**

**5.6.1. Project Ownership.** The Project shall be or become part of the Premises upon Substantial Completion of construction (regardless of whether the Premises and the Project are referred to separately in this Lease), and such Project and any and all subsequent additions, substitutions, and/or fixtures therein shall be owned by the Tenant until the expiration or earlier termination of the Term, and during the Term and for the years in which the Term begins and ends, the Tenant alone shall be entitled to the tax and amortization attributes thereof, including, but not limited to, depreciation deductions and low income housing tax credits thereon for income taxes purposes.

**5.6.2. Surrender.** At the expiration or earlier termination of the Term or any portion thereof under any provision of this Lease, the Tenant shall peaceably leave, quit, and surrender the Premises and the Project, or the portion thereof so terminated, subject to the rights of Occupants in possession of Units under leases with the Tenant; provided that, subject to the rights of the Occupants under such leases, such Occupants are not in default thereunder beyond any grace period provided therein, and attorn to the Landlord as such Occupants' lessor. Subject to the rights of the Landlord, upon such expiration or termination, the Premises, the Project, and all portions thereof so terminated shall become the sole property of the Landlord at no cost to the Landlord and shall be free of all liens and encumbrances and in good condition, subject only to reasonable wear and tear and, in the event of a casualty, to the provisions of **Article VI** hereof. In connection with the foregoing, the Landlord shall be entitled to cause the fee interest in the Premises and the leasehold interest in the Premises to be separate, rather than have the fee interest and the leasehold interest merged.

**5.6.3. Alterations.** Following Substantial Completion, the Tenant shall not make any alteration, improvement, or addition to the Premises and/or the Project having a cost greater than One Hundred Thousand Dollars (\$100,000), or such lesser amount as may be provided in the management agreement and/or the management plan, as approved by the Landlord, and applicable to the Premises and the Project, or demolish any portion thereof, without first presenting to the Landlord complete plans and specifications therefor and obtaining Landlord's written consent thereto (which consent shall not unreasonably be withheld so long as, in the Landlord's judgment, such alteration, improvement, addition, or demolition will not violate the Legal Requirements or this Lease, or impair the value of the Premises and/or the Project). Any improvements made to the Premises by either party hereto shall be made only in good and workmanlike manner, using new or comparable recycled materials of the same quality as the original improvements, and in accordance with all applicable building codes, and the Legal Requirements.

**5.7. Easements; Annexation.**

The Landlord agrees that the Landlord shall not unreasonably withhold or delay the Landlord's consent, and shall join with the Tenant from time to time during the Term in the following (provided, however, the Landlord is not subject to any cost, expenses or fee, or other liability, in connection therewith): (a) the granting of easements affecting the Premises and the Project that are for the purpose of providing utility services for the Project; and (b) the dedication or conveyance, as required, of portions of the Premises for road, highway, and other public purposes to provide access for the Project or to permit widening of existing roads or highways. If any monetary consideration is received by the Tenant as a result of the granting of any such easement or the dedication or conveyance of any portion of the Premises as provided, such

consideration shall be treated as part of effective gross income, and the cost of obtaining the same shall be treated as part of Operating Expenses. As a condition precedent to the exercise by the Tenant of any of the powers granted to the Tenant in this **Section 5.7**, the Tenant shall give written notice to the Landlord of the action to be taken, shall certify in writing to the Landlord that such action will not adversely affect either the value or the use of the Premises, the Project, or any part thereof, and shall deliver all instruments required of the Tenant by the Landlord, and any mortgagee of the Premises.

#### **5.8. Obligation to Construct.**

Tenant hereby agrees, covenants and warrants that Tenant shall perform all of the Work. All such Work shall be in compliance with, and subject to, all of the terms, covenants and provisions of this Lease including, but not limited to, the Approved Plans, the Legal Requirements (as applicable), and all federal, state, and local laws, rules, and regulations, including without implied limitation those pertaining to zoning, environmental, subdivision, building, health, safety, and sanitary conditions. Tenant shall solicit and consider, in good faith, all input of the Landlord in the performance of Tenant's obligations under this Lease (e.g., inviting the Landlord's staff to participate on teams working on various aspects of the Project, or otherwise soliciting from the Landlord comments and suggestions in regard to the Tenant's obligations, etc.). Notwithstanding the foregoing sentence, the Tenant has made or will make independent investigation and inquiry into all matters relevant to such matters, without reliance on any statement or representation of Landlord.

#### **5.9. Holder Agreement Compliance with Chapter 66A.**

The Tenant agrees that, if the Tenant requests and the Landlord provides "personal data," as such term is defined by M.G.L. Chapter 66A (the "BHA Data"), the Tenant, and its employees, representatives, subcontractors, subconsultants, contractors, and/or agents ("Holders") shall comply with M.G.L. Chapter 66A with respect to such BHA Data, and that such BHA Data will be placed in a system that reasonably assures the confidentiality of the BHA Data. In its use and maintenance of BHA Data, the Tenant shall not disseminate or publish any such BHA Data (except to Landlord's or the Tenant's designated officers and employees in the ordinary course of business) without the informed consent of the data subject (as defined in M.G.L. Chapter 66A) and the Landlord, or as permitted by law. The Tenant further agrees that, upon the expiration of this Lease, any such BHA Data collected shall, as the Landlord directs, be either returned to the Landlord or destroyed, provided, however, that the Tenant may retain a copy of such BHA Data for compliance and/or archival purposes.

### **ARTICLE VI CASUALTY AND TAKING**

#### **6.1. Casualty.**

If the Project is damaged or destroyed by fire or other casualty, the Tenant shall proceed promptly to establish and collect all valid claims that may have arisen against insurers or others based upon any such damage or destruction, subject to the requirements of the Governing Documents and the Legal Requirements. Unless otherwise determined in accordance with **Section**



**6.3** and subject to the preconditions thereof, the Tenant shall repair, restore or reconstruct all parts of the Project so damaged or destroyed to their condition at the time of such damage or destruction and the insurance proceeds and any other funds so collected shall be used and expended by the Tenant for such purpose. Any excess proceeds after such repair or reconstruction has been fully completed shall be retained by the Tenant, subject to the rights of the Landlord to require that such excess be applied to the outstanding balance of any indebtedness secured by any Permitted Mortgage that has a lien superior to the Landlord's Permitted Mortgage, if any, and, after satisfaction of the same, to the indebtedness secured by the Landlord's Permitted Mortgage.

#### **6.2. Commencement and Completion of Restoration.**

When reconstruction or repair of the Project or any portion thereof, which has been destroyed or damaged, is required by the provisions of this **Article VI**, such reconstruction or repair shall be commenced within a period not to exceed sixty (60) calendar days after the insurance proceeds have been received by the Tenant (or, if the conditions then prevailing require a longer period, including, without limitation, the obtaining of any necessary permits or approvals of governmental bodies, such longer period as shall reasonably be required by the Tenant proceeding with due diligence), the Tenant shall diligently prosecute such reconstruction or repair to completion, such reconstruction or repair to be completed as expeditiously as possible, and in no event longer than two (2) years after the earlier of (a) the aforesaid sixty (60) calendar days, or (b) the commencement thereof.

#### **6.3. Determination of Whether or Not to Restore.**

If the Project is substantially damaged or destroyed by casualty, the Tenant shall, within a commercially reasonable period, repair or restore the Project so long as (a) the repairs or restoration is lawful, (b) the Permitted Mortgagee first in priority permits such repairs or restoration, and (c) adequate insurance proceeds and other funds are made available to the Tenant to complete such restoration and repairs. If restoration or repair of any substantial damage shall be required during the last ten (10) years of the Term, then the Tenant shall have the right to terminate this Lease upon ninety (90) calendar days' notice to the Landlord in which event the insurance proceeds (net of the Tenant's reasonable cost to obtain the same) shall be payable as set forth in **Section 6.4**. If the Tenant does not so terminate this Lease, then said insurance proceeds shall be payable to the Tenant and the Tenant shall fully repair or restore. If the Tenant reasonably determines that the reconstruction of a portion, but not all, of the damaged Project is practicable and meets the criteria of the initial two (2) sentences of this **Section 6.3** above based on the Tenant's reasonable determination as to such portion of the Project, the Tenant shall so notify the Landlord and, subject to **Section 6.1**, said insurance proceeds shall be payable to the Tenant, and the Tenant shall then restore such portion of the Project pursuant to **Section 6.10**.

#### **6.4. Allocation of Proceeds.**

If such casualty occurs and the Tenant elects to terminate this Lease in accordance with **Section 6.3**, the net insurance proceeds (after deducting the reasonable cost of obtaining the same) shall be allocated in the following order of priority: First, to the Permitted Mortgagees, in the amount of any outstanding sums secured by their respective Permitted Mortgages and in their respective order of priority, to the extent required under such Permitted Mortgages; Second, to the

Landlord in the amount of any then outstanding Base or Additional Rent owed by the Tenant; and Third, the balance of the proceeds to the Tenant.

#### **6.5. Tenant's Responsibilities on Termination.**

If the Tenant terminates this Lease following a casualty in accordance with **Section 6.3**, the Tenant, at its sole expense, shall deliver to the Landlord any plans or other technical materials related to the Project and Premises prepared by or for the Tenant or in the Tenant's possession including, but not limited to all Project Documents (as defined below, see, **Section 6.13**). The Tenant shall surrender the Project and Premises to the Landlord in accordance with **Section 5.6** and, upon the payment of the insurance proceeds in accordance with **Section 6.4**, this Lease shall terminate without liability or further recourse to the parties hereto, other than any provisions hereof, which by their express terms are intended to survive such termination; provided that any Rent payable hereunder or obligations under **Section 3.1** hereof owed by the Tenant to the Landlord as of the date of said termination shall be paid or otherwise carried out in full.

#### **6.6. Notice of Taking.**

Forthwith upon receipt by either the Landlord or the Tenant of notice of the institution of any proceedings for a Taking, the party receiving such notice shall promptly give notice thereof to the other, and such other party may also appear in such proceeding and be represented by counsel, who may be counsel for the party receiving such notice.

#### **6.7. Special Account.**

The full amount of any award whether pro tanto or final, for any Taking (the "**Award**"), shall, notwithstanding any allocation made by the awarding authority, be paid and allocated as set forth below; provided that there shall first be deducted from the Award in the order stated: (i) all reasonable fees and expenses of collection, including, but not limited to reasonable attorneys' fees and experts' fees, which shall be paid to the party that has incurred such fees and expenses; (ii) any outstanding amounts secured by the respective Permitted Mortgagees of any Permitted Mortgage shall, to the extent required under such Permitted Mortgage, be paid to such Permitted Mortgagees in their respective order of priority; (iii) any outstanding amounts secured by a Permitted Mortgage in favor of the Landlord to the extent required under such Permitted Mortgage shall be paid to the Landlord; and (iv) any Rent outstanding prior to the Taking owed by the Tenant that shall be paid to the Landlord. If the Premises and the Project shall be restored as is contemplated in **Section 6.9** below, the Tenant shall be entitled to recover the costs and expenses incurred in such restoration out of any net Award. The remainder of the Award (the "**Remainder**") shall be allocated (x) to the Landlord, an amount equal to the product of the amount allocated to the Project multiplied by the Landlord's Percentage (hereafter defined), and (y) to the Tenant, an amount equal to the product of the amount allocated to the Project multiplied by the Tenant's Percentage (hereinafter defined). The Landlord's Percentage shall equal: (a) the fair market value, at the time of the Taking, of the land that constitutes the entire lease area of the Premises, (b) unencumbered by this Lease, (c) restricted to the uses permitted by the Governing Documents to the extent then applicable, (d) plus the residual fair market value of the Project as of the expiration of the Term (the "**Land Value**") divided by the sum of the Land Value and the Project Value as of the date of the Taking. The Project Value shall equal the fair market value, at the time of the



Taking, of the Project, taking into account the then remaining Term of this Lease and all other restrictions of the Governing Documents (the "**Project Value**"). The Tenant's percentage shall equal the Project Value divided by the sum of the Land Value and Project Value. The portion of the Award so allocated to the Landlord shall be known herein as the "**Landlord's Award**", and the portion so allocated to the Tenant shall be known herein as the "**Tenant's Award**." Thereafter, the parties agree that any net Award will be allocated on a proportionate basis, taking into account the portion of the Landlord's contribution that has not been repaid to the Landlord as of such time, whether through repayment of any loan from the Landlord (directly or indirectly) to the Tenant or otherwise. If the parties are unable to agree as to the exact amount of such allocation or if such allocation is no longer applicable because of the repayment of the Landlord's contribution, and the parties are unable to agree as to amounts that are to be allocated to the respective interests of each party, then each party shall select an independent MAI real estate appraiser (an "**Appraiser**"). Each Appraiser shall separately determine the amount of the balance of the net Award that is to be allocated to the interest of each party. If the percentage of the balance of the net Award each Appraiser allocates to the Landlord (a) are within ten percent (10%) of each other, the two (2) allocations shall be averaged and such average shall be the final allocation of the net Award, or (b) are not within ten percent (10%) of each other, the two (2) Appraisers shall then select a third Appraiser, who shall independently allocate the net Award between the Landlord and the Tenant, and the middle of such three (3) allocations shall be the final allocation of the net Award.

#### **6.8. Total Taking.**

In the event of a permanent and total Taking of the fee title to or of control of the Premises or the Project or of the entire leasehold estate hereunder (a "**Total Taking**"), this Lease shall thereupon terminate as of the effective date of such Total Taking, without liability or further recourse to the parties, other than the provisions hereof that, by their express terms, are intended to survive such termination, provided that any Rent payable or obligations owed by the Tenant to the Landlord as of the date of the Total Taking shall be paid or otherwise carried out in full.

#### **6.9. Partial Taking: Procedures and Criteria for Course of Action.**

In the event of a permanent Taking of all or less than all of the Premises and the Project (a "**Partial Taking**"),

(a) if the Tenant reasonably determines that the continued use and occupancy of the remainder of the Premises and the Project by the Tenant is or can reasonably be made to be economically viable, structurally sound, consistent with the Governing Documents, and otherwise feasible based upon the amount of the Award proceeds and any available other funds (without the necessity of the Tenant securing additional funds or contributing funds of its own) as, at the Tenant's option, are available for the purpose of paying for such restoration (the "**Restoration Criteria**"), the Tenant shall so notify the Landlord and shall then restore the Premises and the Project pursuant to **Section 6.10** hereof;

(b) if the continued use and occupancy of the remainder of the Premises and the Project by the Tenant is not or cannot reasonably be made to be economically viable, structurally sound, consistent with the Governing Documents, and otherwise feasible, then the Tenant may terminate this Lease upon thirty (30) calendar days' notice to the Landlord pursuant to **Section 6.11** hereof.

#### **6.10. Restoration.**

If a reasonable decision is made by the Tenant pursuant to **Section 6.9** to restore the remainder of the Premises and the Project, the Tenant and the Landlord shall reasonably agree upon and approve plans and specifications to modify the remaining Premises and Project. Upon approval of said plans, the Tenant shall promptly proceed, at the Tenant's expense, to commence and complete the restoration pursuant to the provisions of **Section 6.2** hereof. The Tenant may use the entire Tenant's Award for such restoration, and shall be entitled to any remaining portion of the Award after the completion of the restoration subject to the rights of any party under the Governing Documents. If the Tenant has decided pursuant to **Section 6.9** to restore the remainder of the Premises and the Project, and if the cost of the restoration shall exceed the amount of the Tenant's Award, or if the Tenant's Award shall become unavailable in whole or in part for any reason, the Tenant shall again have the right to terminate this Lease pursuant to **Section 6.11** below.

#### **6.11. Termination upon Non-Restoration.**

Following a Partial Taking, if a reasonable decision is made by the Tenant pursuant to **Section 6.9** or **Section 6.10** hereof that the remaining portion of the Premises and the Project are not to be restored, the Tenant shall surrender the Premises and the Project to the Landlord and this Lease shall thereupon be terminated without liability or further recourse to the parties hereto, subject to the provisions hereof, which by their express provisions are intended to survive such termination. The Tenant's Award shall be applied to the extent necessary to pay amounts then due and owing under the provisions of this Lease.

#### **6.12. Joinder.**

All mortgagees under Permitted Mortgages, including the Landlord, to the extent permitted by Legal Requirements, shall be made a party to any Taking proceeding.

#### **6.13. Drawings and Documents.**

In the event of any termination of this Lease by reason of any such casualty or condemnation or any other provision of this Lease, the Tenant will assign to the Landlord and grant to the Landlord all of the Tenant's right, title, and interest in, to, and under, to the extent any affect the Premises, the Project, or any part thereof, the following "**Project Documents**," including but not limited to: (a) all architectural work products, engineering work products, and plans, specifications, drawings, and reports, including copyrights related to the foregoing, surveys, plats, permits, and the like, contracts for design, construction, operation, and maintenance of, or provisions for services to, the Premises, the Project, and all parts thereof, including all drafts and works in progress in connection with the foregoing, and all rights, technology, agreements, licenses, and documents of a similar or dissimilar nature; (b) all sewer taps and allocations, agreement for utilities, bonds, letters of credit, and the like, relating directly or indirectly, wholly or in part, to the Premises, the Project, and all parts thereof; (c) design, marketing, and construction concepts with the Premises, the Project, and all parts thereof; and (d) work products and other deliverables acquired by, or on behalf of, the Tenant with proceeds of any portion of the financing

for the Premises, the Project, and all parts thereof, and works in progress undertaken pursuant to the Premises, the Project, and all parts thereof.

#### **6.14. No Waiver.**

Subject to the provisions of this **Article VI**, no other provisions in this Lease shall limit the rights of either the Landlord or the Tenant to seek compensation from a condemning authority as provided by statute, common law, the Commonwealth of Massachusetts, or the United States Constitution.

### **ARTICLE VII CONDITION OF PREMISES**

#### **7.1. Condition; Title.**

The Premises as of the date of this Lease, and the Project, as and when developed, are demised and let to the Tenant subject to:

(a) zoning regulations, restrictions, rules, laws and ordinances now in effect or hereafter adopted by any governmental authority, including the Legal Requirements;

(b) to the extent applicable, unpaid real estate taxes for the current fiscal tax year that are not yet due and payable, the Landlord hereby agreeing to defend, indemnify, and hold the Tenant harmless from any claim for payments in lieu of taxes, water and sewer charges, and any other municipal liens made by the City of Boston and relating solely to periods prior to the Commencement Date;

(c) all matters of record and in fact existing as of the Commencement Date, including all items either excluded from the Tenant's leasehold title insurance policy or to which such leasehold title insurance policy takes exception, and

(d) notwithstanding anything to the contrary set forth in the immediately preceding clause (c), the Landlord agrees to use good faith, reasonable efforts to assist in the relocation or termination of easements currently encumbering the Premises and existing prior to the Commencement Date to the extent such easements may be reasonably necessary in connection with the Premises and the Project, and all costs associated therewith, shall be included in the Project budget as a Project expense.

The Tenant shall bear all risks associated with performance of its obligations under this Lease. Except for representations expressly set forth in this Lease, the Landlord makes no representations and the Tenant may not rely upon any statement, whether written or oral, now or hereafter made by any officer, employee, agent, or representative of the Landlord, as to (a) the geotechnical, environmental, or other conditions of the Premises and Project, (b) the suitability of the Premises for the Project, (c) the existence or suitability of on-Premises or off-Premises facilities, (d) the availability of governmental permits and approvals other than those issued by the Landlord, (e) the practicality or capacity of plans and specifications heretofore or hereafter approved by the Landlord to satisfy the performance requirements of any governmental and quasi-governmental agencies, and/or (f) the Premises and/or Project and the contemplated use thereof to

comply with existing zoning requirements. The Landlord hereby disclaims any statement or representation not consistent with this **Section 7.1**.

#### **7.2. No Encumbrances.**

The Landlord covenants that the Landlord, subject to the provisions of **Section 7.1**, has full right and lawful authority to enter into this Lease in accordance with the terms hereof and to grant the estate demised hereby. The Landlord covenants that the Landlord will not encumber or lien the fee title of the Premises or cause or permit the title to be encumbered or liened in any manner resulting from the Landlord's actions, and if the Landlord fails to comply with the foregoing, such failure shall be a default by the Landlord hereunder, and following any cure period applicable thereto, and the Landlord's failure to cure within such period, the Tenant may reduce or discharge any such encumbrance or lien by payment or otherwise at any time and recover or recoup all reasonable costs and expenses thereof from the Landlord together with interest at the Base Interest Rate. Such recovery or recoupment may, in addition to all other remedies, be made by setting off against the amount of rent payable by the Tenant hereunder. The Landlord agrees to use the Landlord's good faith, reasonable efforts to assist the Tenant in obtaining any and all easements and rights of way as may be necessary or appropriate for the Project; provided, however, the Landlord shall not be subject to any expense, cost, fee, or liability in connection therewith, and the expense thereof shall be included in the Project budget as a Project expense. The Landlord further covenants that the Landlord has not received as of the Commencement Date written notice of the intention of any party holding an easement affecting the Premises or any part thereof to expand the exercise of any such easement beyond the scope of the present exercise thereof (as by replacing or expanding existing facilities, conduits [including underground or overhead wires, cables or pipes] or systems for sewers, water, electric, gas, cable, and other utilities).

#### **7.3. Quiet Enjoyment.**

The Landlord covenants and warrants that the Tenant shall peaceably and quietly have, hold, occupy, use, and enjoy the Premises during the Term, subject only to the provisions of this Lease, all Legal Requirements, the Governing Documents, and the Tenant's timely compliance with all of the terms, covenants and provisions of this Lease and the foregoing to be performed by the Tenant. Notwithstanding the foregoing, however, the Landlord, HUD, the Comptroller General of the United States, or any of their authorized representatives shall be entitled to enter upon the Premises and the Project to confirm compliance by the Tenant with the foregoing and to review all documents, including, but not limited to, a review of any books, documents, papers, or other records related to the Premises, the Project, and/or this Lease in order to make audits, examinations, excerpts and transcripts, upon reasonable prior notice to the Tenant.

#### **7.4. Exhibiting the Premises/Project.**

The Landlord and the Landlord's authorized representatives may from time to time, after giving reasonable prior notice thereof to the Tenant, the property manager, and subject to the rights of any Occupant, enter the Premises, the Units and/or parts of the Project during the Tenant's normal business hours to exhibit the Premises, the Units, or parts of the Project for purposes of exhibiting the foregoing to any governmental and/or quasi-governmental authorities or other third-parties that have an interest in developments similar to the Premises, the Project, or the Units, or

similarly financed or for any other business purpose; provided that in doing so, the Landlord and each such authorized representative observes all reasonable safety standards and procedures that the Tenant may require. In exercising the Landlord's rights under this **Section 7.4**, the Landlord shall use the Landlord's good faith, reasonable efforts to minimize any interference or disruption of the Tenant's work or the Tenant's use or operation of the Premises. The governmental and or quasi-governmental authorities shall include, but not be limited to, the Landlord, HUD, the Comptroller General of the United States, and their authorized representatives. The Tenant agrees to grant a right of access to the Landlord, HUD, the Comptroller General of the United States, or any of their authorized representatives, with respect to any books, documents, papers, or other records related to this Lease in order to make audits, examinations, excerpts, and transcripts.

#### **7.5. Additional Representations, Covenants, and Warranties of the Landlord.**

As an inducement to the Tenant to enter into and proceed under this Lease, the Landlord warrants, represents, and covenants to the Tenant as follows which warranties, representations, and covenants are true and correct, as of the date of this Lease:

(a) to the Knowledge of the Landlord, there is no litigation or action, pending or threatened in writing, materially affecting the Premises or any streets or other public rights-of-way abutting or serving the Premises;

(b) the Landlord has received no written notice and has no Knowledge of any pending or threatened Taking relating to all or any part of the Premises;

(c) the entry by the Landlord into this Lease with the Tenant and the performance of all of the terms, provisions, and conditions contained herein will not, or with the giving of notice or the passage of time, or both, would not, violate or cause a breach or default under any other agreement relating to the Premises to which the Landlord is a party or by which the Landlord is bound, which would, if enforced by the other party thereto, have a material adverse impact upon the Tenant's rights under this Lease;

(d) there are no unpaid special assessments of which the Landlord has Knowledge for sewer, sidewalk, water, paving, gas, electrical, or utility improvements or other capital expenditures, matured or unmatured, affecting the Premises;

(e) the Landlord is not obligated under any contract, lease, or agreement with respect to the ownership, use, operation, or maintenance of the Premises.

#### **7.6. Environmental Remediation.**

The Tenant agrees that, by the execution of this Lease, the Tenant releases the Landlord from any claims the Tenant may have against the Landlord pursuant to Massachusetts General Laws Chapter 21E ("**Chapter 21E**") and/or the Massachusetts Contingency Plan, 310 C.M.R. 40.0000 *et seq.* (the "**MCP**") with respect to the Premises, the Project, or any part thereof. The Tenant further acknowledges and agrees that in consideration of the rights and benefits granted to the Tenant under this Lease, but subject to **Section 4.1**, the Tenant shall be responsible for carrying out in accordance with the requirements of Chapter 21E and the MCP any investigation or remediation required pursuant to Chapter 21E and/or the MCP of the Premises, the Project, or any

part thereof, at the Tenant's sole cost and expense, without recourse to the Landlord, and subject to the indemnification obligations set forth in **Section 4.1**.

No representations, warranties, or other covenants are made by the Landlord in regard to the condition of the Premises, and the Premises is being provided to the Tenant hereunder in "**AS IS**," "**WHERE IS**" and "**WITH ALL FAULTS**" condition. The Landlord shall have no obligation to perform any investigation or remediation, on behalf of the Tenant, or in furtherance of the Tenant's development of the Premises, the Project, or any part thereof.

\_\_\_\_\_ (the "**Tenant LSP**") and other consultants have conducted environmental assessments of the Premises, and have identified the historic recognized environmental conditions and the existing contamination at the Premises ("**Current Known Conditions**").

In regard to any further or future environmental testing, auditing, or other investigatory procedures performed by the Tenant, in the event the Tenant becomes aware of the necessity of any remediation of the Premises under Chapter 21E and/or the MCP, then the Tenant shall notify the Landlord in writing within ten (10) days following the Tenant's knowledge thereof unless it is of a more time-critical nature, per the MCP, in which case the Tenant shall notify the Landlord verbally promptly following the Tenant's knowledge thereof, followed by written notice to the Landlord promptly thereafter. Any and all activities undertaken by the Tenant with respect to environmental testing, auditing, or other investigatory procedures shall only be undertaken by the Tenant after receiving the prior written approval of the Landlord, which approval shall not be unreasonably denied, delayed or conditioned.

The Landlord and the Tenant agree that they will, if and to the extent required, comply fully with Chapter 21E and the MCP to take all actions necessary to address the Current Known Conditions as they relate to the Premises; provided that the Tenant shall be responsible, at its sole cost and expense, to conduct any Response Actions (as defined in the MCP) required by the Massachusetts Department of Environmental Protection ("**MADEP**") arising from Current Known Conditions as they relate to the Premises, including, if and to the extent required and without limitation, the preparation and execution by the Tenant LSP of a RAM Plan, RAM Completion Report, a Permanent or Temporary Solution Statement, an Activity and Use Limitation ("**AUL**"), an AUL Opinion, and all other required documentation, if necessary, and the taking of all other steps required by Chapter 21E and the MCP, including the satisfaction of all required notices with respect thereto and the construction and maintenance of any engineered controls to comply with any AUL if an AUL is required. The Tenant shall provide drafts of all MCP documents, plans, and reports to the Landlord for review and approval (which approval shall not be unreasonably denied, delayed, or conditioned) prior to submission to MADEP and/or the filing thereof. The Landlord shall review and approve, and, if required, execute such submission, or shall provide the Tenant with its comments or reasons for disapproval within seven (7) business days of the receipt of the submission (or revised submission) from the Tenant. Upon approval of the same by the Landlord's Licensed Site Professional, \_\_\_\_\_ (the "**Landlord LSP**"), which approval shall not be unreasonably denied, delayed, or conditioned, and execution by the Landlord where the property owner's signature is required, the Tenant shall cause the same to be filed with the MADEP and, in the case of an AUL, recorded with the Suffolk County Registry of Deeds, as appropriate.



The Landlord shall be solely responsible for the cost of the Landlord LSP. The Tenant shall be solely responsible for the cost of the Tenant LSP.

This **Section 7.6** shall survive the expiration or any earlier termination of this Lease.

## **ARTICLE VIII DEFAULTS**

**8.1. Tenant Default.** The occurrence of any of the following events shall constitute an event of default (“**Event of Default**”) by the Tenant hereunder:

(a) if the Tenant fails to pay when due any rent or other sum, and any such default shall continue for thirty (30) calendar days after the receipt of the Landlord’s written notice thereof by the Tenant; or

(b) if the Tenant fails to observe or perform any covenant, condition, agreement, or obligation hereunder not addressed by any other event described in this **Section 8.1**, and shall fail to cure, correct, or remedy such failure within thirty (30) calendar days after the receipt of written notice thereof, unless such failure is not monetary in nature such that it cannot be cured by the payment of a sum certain to the Landlord or otherwise cannot with due diligence be cured within a period of thirty (30) calendar days, in which case such failure shall not be deemed to continue if the Tenant proceeds promptly, with due diligence and without interruption, to commence to cure the failure within ten (10) calendar days following the Landlord’s notice thereof, and cures such failure within the earliest practicable time thereafter, not to exceed one (1) year; or

(c) if the Tenant abandons the Premises, the Project, or any substantial portion thereof and such abandonment is not cured within thirty (30) calendar days following written notice from the Landlord; or

(d) if any representation or warranty of the Tenant set forth in this Lease shall prove to be incorrect in any materially adverse respect as of the time when such representation or warranty shall have been made and the same shall not have been remedied to the reasonable satisfaction of the Landlord within thirty (30) calendar days after notice from the Landlord unless such cure cannot with due diligence be cured within a period of thirty (30) calendar days, in which case the Landlord shall not have the right to exercise the Landlord’s remedies under this Lease so long as the Tenant commences such cure within ten (10) calendar days following the Landlord’s notice thereof, and cures such failure within the earliest practicable time thereafter, not to exceed one hundred and eighty (180) calendar days; or

(e) if the Tenant shall be adjudicated bankrupt or be declared insolvent under the Federal Bankruptcy Code or any other federal or state law (as now or hereafter in effect) relating to bankruptcy, insolvency, reorganization, winding-up, or adjustment of debts (“**Bankruptcy Laws**”), or if the Tenant shall: (i) apply for or consent to the appointment of, or the taking of possession by, any receiver, custodian, trustee, United States Trustee, or liquidator (or other similar official of the Tenant) of the major portion of the Tenant’s property or any substantial portion of the Tenant; (ii) generally not pay debts as they become due or admit in writing the Tenant’s inability to pay the Tenant’s debts generally as they become due; (iii) make a general

assignment for the benefit of the Tenant's creditors; (iv) file a petition commencing a voluntary case under or seeking to take advantage of the Bankruptcy Laws; or (v) fail to controvert in a reasonably timely and appropriate manner, or in writing acquiesce to, any petition commencing an involuntary case against the Tenant pursuant to the Bankruptcy Laws; or

(f) if an order for relief against the Tenant shall be entered in any involuntary case under the Bankruptcy Laws, or if a petition commencing an involuntary case against the Tenant or proposing the reorganization of the Tenant under the Bankruptcy Laws shall be filed in and approved by any court of competent jurisdiction and not be discharged or denied within ninety (90) calendar days after such filing, or if a proceeding or case shall be commenced in any court of competent jurisdiction seeking (i) the liquidation, reorganization, dissolution, winding-up, or adjustment of debts of the Tenant; (ii) the appointment of a receiver (not including a receiver appointed pursuant to any leasehold mortgage), custodian, trustee, United States Trustee, or liquidator (or other similar official of the Tenant) of the major portion of the Tenant's property or any substantial portion of the Tenant; or (iii) any similar relief as to the Tenant pursuant to Bankruptcy Laws, and any such proceeding or case shall continue undismissed, or any order, judgment, or decree approving or ordering any of the foregoing shall be entered and continued unstayed and in effect for 90 days.

## **8.2. Landlord Remedies.**

Upon the occurrence of any Event of Default of the Tenant hereunder, the Landlord, as the Landlord's sole and exclusive remedy, shall (subject in all respects to the provisions of this Lease entitling the Landlord to cure the Tenant defaults, and subject further to the rights of any mortgagee under a Permitted Mortgage as described in **Sections 9.5 and 9.7** herein and the rights of a tax credit investor as described in **Section 9.6** herein) have the right to (a) petition or initiate one or more actions in an equity court of competent jurisdiction for appropriate relief including, without limitation, one or more of the following actions for equitable relief: preliminary or permanent injunction, specific performance, or any other equitable relief; (b) seek actual damages in a law court of competent jurisdiction (but not consequential or punitive damages) to the extent of any monetary default hereunder by the Tenant; and (c) terminate this Lease. Subject to the provisions of **Sections 8.3, 8.4, 8.5, and 8.6**, the foregoing rights and remedies of the Landlord shall be the sole rights and remedies of the Landlord hereunder, and the Landlord hereby waives any and all other rights and remedies to which it may otherwise may have been entitled, under law, at equity or under this Lease.

## **8.3. Deficiency Judgments.**

The Landlord, for itself and for each and every succeeding owner of the Landlord's estate in the Premises, agrees that the Landlord shall not be entitled to seek a personal judgment against the Tenant and that upon any Event of Default hereunder the rights of the Landlord to enforce the obligations of the Tenant, the Tenant's successors or permitted assigns, or to collect any judgment, shall be limited to the termination of this Lease and the enforcement of any other rights and remedies specifically granted to the Landlord hereunder; provided, however, notwithstanding any limitations set forth in this **Section 8.3** and the provisions of **Section 8.2**, the Tenant shall be liable to the Landlord for any and all claims, suits, liabilities, actions, proceedings, obligations, debts, damages, losses, costs, expenses, fines, penalties, charges, fees, judgments, awards, amounts paid



in settlement, foreseeable and unforeseeable damages of whatever kind or nature (collectively, “**Losses**”) due (wholly or in part, directly or indirectly) to: (a) fraud or intentional misrepresentation by the Tenant in connection with the execution and the delivery of this Lease; (b) the Tenant’s misapplication or misappropriation of accounts receivable collected in advance or received by the Tenant after the occurrence of an Event of Default under this Lease; and (c) the Tenant’s failure to maintain, at the Tenant’s expense, the insurance coverages and policies, as required by this Lease (the “**Exceptions to Non-recourse**”). The Landlord’s election not to exercise any of the Landlord’s rights and/or remedies relating to any of the Exceptions to Non-recourse shall not reduce, relieve, or affect, in whole or in part, the Tenant’s personal liability for any Losses.

#### **8.4. Termination of Lease for the Tenant's Default.**

Subject to the rights of holders of Permitted Mortgages and any tax credit investor that is a limited partner within the Tenant pursuant to **Article IX** herein, the Landlord may terminate this Lease upon not less than thirty (30) additional calendar days' written notice to any mortgagee under a Permitted Mortgage or tax credit investor of which the Landlord has Knowledge, setting forth the Tenant's uncured, continuing default and the Landlord's intent to exercise the Landlord’s rights to terminate under this **Section 8.4**. This Lease shall terminate on the expiration of such additional thirty (30) calendar day cure period unless within such time period the mortgagee under a Permitted Mortgage or tax credit investor commences to cure such default and diligently pursues such cure to completion within ninety (90) calendar days of such notice from the Landlord.

Upon such termination, the Tenant's interest in the Premises, the Project, and each part thereof, shall automatically revert to the Landlord, and the Tenant shall promptly quit and surrender the Premises and the Project to the Landlord, without cost to the Landlord, and the Landlord may, without demand and further notice, reenter and take possession of the Premises and the Project, or any part thereof, and repossess the same as the Landlord's former estate by summary proceedings, ejectment, or otherwise without being deemed guilty of any manner of trespass and without prejudice to any remedies that the Landlord might otherwise have for arrearages of rent or for a prior breach of the provisions of this Lease. The obligations of the Tenant under this Lease that arose prior to termination shall survive such termination. Upon such reacquisition by the Landlord of the Landlord’s former estate in the Premises and the Project, the fee interest in the Premises and the Project and the leasehold interest in the Premises and the Project shall remain separate, rather than have such interests merge.

#### **8.5. Rights Upon Termination.**

Upon termination of this Lease pursuant to **Section 8.4**, the Landlord may:

- (a) at the time of such termination, retain all Base Rent and Additional Rent paid hereunder, without any deduction, offset, or recoupment whatsoever;
- (b) enforce the Landlord’s rights under any bond outstanding at the time of such termination; and
- (c) require the Tenant to deliver to the Landlord, or otherwise effectively transfer to the Landlord any and all governmental approvals and permits, and any and all rights of

possession, ownership, or control the Tenant may have in and to, any and all Project Documents, including, plans, specifications, and other technical documents or materials related to the Premises, the Project, and all parts thereof.

In addition to the above remedies of the Landlord, and notwithstanding anything set forth in this Lease to the contrary, the Tenant agrees to reimburse the Landlord for any and all actual expenditures incurred and for any and all actual damages suffered by the Landlord by reason of such Event of Default or such termination, however caused, including all costs, claims, losses, liabilities, damages, and expenses (including without limitation, reasonable attorneys' fees and costs) incurred by the Landlord as a result thereof.

#### **8.6. Performance by the Landlord.**

If the Tenant shall fail to make any payment or perform any act required under this Lease, following any applicable notice and opportunity to cure, the Landlord may (but need not), and without waiving any default or releasing the Tenant from any obligations, cure such default for the account of the Tenant. The Tenant shall promptly pay the Landlord the amount of such charges, costs, and expenses as the Landlord shall have incurred in curing such default, together with interest at the Base Interest Rate.

#### **8.7. Default by the Landlord.**

It shall be a default of the Landlord if the Landlord fails to observe or perform any covenant, condition, agreement, or obligation hereunder, and shall fail to cure, correct, or remedy such failure within thirty (30) calendar days after the receipt of written notice thereof from the Tenant, unless such failure is in the nature such that it cannot be cured by the payment of a sum certain to the Tenant or otherwise cannot with due diligence be cured within a period of thirty (30) calendar days, in which case such failure shall not be deemed to continue if the Landlord proceeds promptly, with due diligence and without interruption, to commence to cure the failure within ten (10) calendar days following the Tenant's notice thereof, and cures such failure within the earliest practicable time thereafter, not to exceed one (1) year.

#### **8.8. Tenant Remedies.**

In the event of any event of default hereunder (final after the expiration of all applicable grace periods) by the Landlord, the Tenant, as the Tenant's sole and exclusive remedy, shall (subject in all respects to the provisions of this Lease entitling the Tenant to cure defaults by the Landlord and with respect to the rights of any mortgagee under a Permitted Mortgage), have the right to (a) petition or initiate one or more actions in any equity court of competent jurisdiction for appropriate relief under one or more of the following actions: preliminary or permanent injunction, specific performance, or any other equitable relief; and (b) seek actual damages in a court of law of competent jurisdiction (but not consequential or punitive damages), to the extent of any monetary default hereunder by the Landlord. The foregoing rights and remedies of the Tenant shall be the sole rights and remedies of the Tenant hereunder, and the Tenant hereby waives any and all other rights and remedies to which it may otherwise have been entitled, under law, at equity, or under this Lease.

## **8.9. General.**

(a) No defaults in the performance of the terms, covenants, or conditions of this Lease on the part of the Tenant or the Landlord (other than in the payment of any installment of rent and other sums due from the Tenant) shall be deemed to continue if and so long as the Landlord or the Tenant, as the case may be, shall be delayed in or prevented from remedying the same due to an event of Force Majeure, unless such party fails to cure the default within ten (10) days following the expiration of the event of Force Majeure.

(b) Upon dissolution of the Landlord, the successor agency or entity to the Landlord shall assume the obligations of the Landlord pursuant to this Lease and shall execute any documents necessary to evidence such assumption of obligations, and this Lease shall remain in full force and effect.

(c) The defaulting party may be liable for the reasonable legal expenses of the non-defaulting party in connection with any collection of funds owed under this Lease, the remedying of any default under this Lease, or any termination of this Lease which such collection, remedying, or termination results from an Event of Default, as finally determined by a court of competent jurisdiction. If a default is alleged and it shall be determined that no default exists the court may determine for just cause that the alleging party shall be liable for the legal costs and expenses of the other party in defending such claim.

(d) Unless otherwise specifically provided in this Lease, no remedy herein shall be exclusive of any other remedy or remedies, and each such remedy shall be cumulative and in addition to every other remedy; and every power and remedy given by this Lease may be exercised from time to time and as often as may be deemed expedient by either party. No delay or omission by the Landlord to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein.

## **8.10. Notices.**

Notices given by the Landlord under **Section 8.1** or by the Tenant under **Section 8.9** or **Section 8.10** shall specify the alleged default and the applicable Lease provisions, and shall demand that the Tenant or the Landlord, as applicable, perform the appropriate provisions of this Lease within the applicable period of time for cure.

## **8.11. No Cross Default.**

The Landlord and the Tenant acknowledge that affiliates of the Tenant may from time to time enter into similar ground leases with the Landlord or its affiliates, in connection with the revitalization of other portions of the Mary Ellen McCormack redevelopment. The Landlord hereby expressly acknowledges that any default by any such tenant under such tenant's respective ground lease shall not be construed as or deemed a default by the Tenant hereunder. The Tenant, for itself and its affiliates, hereby expressly acknowledges that any default by any landlord under such landlord's respective ground lease shall not be construed or deemed a default by the Landlord hereunder.

## **ARTICLE IX RIGHTS OF LEASEHOLD MORTGAGEE AND TAX CREDIT INVESTOR (if applicable)**

### **9.1. Right of Mortgagees.**

This Lease is expressly subject to the terms and conditions, if applicable, of Section 42 of the Code in regard to the LIHTC Units. To the extent the Governing Documents, the Legal Requirements, and Section 42 of the Code, if applicable, expressly permit the Tenant to subject the Premises and the Project to additional mortgages other than the Permitted Mortgages, the Tenant shall have the right from time to time to encumber the Tenant's interest in the Premises and the Project with one or more mortgages in favor of the Landlord and with additional mortgages in favor of other mortgagees in accordance with this **Section 9.1** and other applicable provisions of this Lease. Each such mortgage shall be expressly subject to this Lease and Section 42 of the Code, if applicable. The Tenant shall give prior notice to the Landlord of the Tenant's desire to enter into a mortgage. Such notice and request for consent shall be made to the Landlord in writing and shall be accompanied by such information as is necessary for the Landlord to determine whether the proposed mortgage could adversely impact the Premises, the Project, any portions thereof, or the ability to operate any of the foregoing or otherwise impair the repayment of any Permitted Mortgage. Within twenty-one (21) calendar days of the Landlord's receipt of such written request, the Landlord shall either determine that the proposed mortgage satisfies the foregoing criteria or shall notify the Tenant of the specific respects in which such mortgage, in the Landlord's judgment, does not satisfy such criteria or shall otherwise indicate with reasonable specificity what further information the Landlord requires to make such determination. If the Landlord requests further information concerning the proposed mortgage, within twenty-one (21) calendar days of the Landlord's receipt of such additional information, the Landlord shall undergo the foregoing analysis and advise the Tenant accordingly. Notwithstanding anything to the contrary set forth in this Lease, and more particularly this **Article IX**, the proceeds of any mortgage obtained by the Tenant, and approved by the Landlord, as aforesaid, shall be used solely for the benefit of the Premises, the Project, or any parts thereof, or the payment of principal or interest under a Permitted Mortgage, and no proceeds thereof shall be used for any other purpose or disbursed to any person, other than the Tenant for such sole use.

Unless (i) a financing transaction is closed with the proposed mortgagee to which confirmation or consent is given or deemed given hereunder within one hundred and eighty (180) calendar days of the date such confirmation or consent is given or deemed given; or (ii) the Tenant enters into a legally binding buy, sell, or three-party agreement with respect to a financing with a proposed mortgagee within such one hundred and eighty (180) calendar day period, then such consent shall be void. Upon request by the Landlord, the Tenant shall furnish the Landlord with copies of the signed commitment letter, the mortgage documents, and such other information as the Landlord may reasonably request and shall also furnish the Landlord with a certified copy of the mortgage as executed and recorded.

### **9.2. No Subordination of Fee.**

At no time shall the Landlord's fee title in the Premises or the Landlord's interest in this Lease be subordinated in any manner to the interest of any mortgagee or lien holder of the Tenant or any person claiming by or through the Tenant.

### **9.3. Notice to Mortgagee(s).**

So long as any Permitted Mortgage lien shall remain on the Tenant's leasehold estate hereunder, and the holder thereof shall have complied with the provisions of **Section 9.9** hereof, the Landlord agrees, simultaneously with the giving of each default notice hereunder to the Tenant, to give a duplicate copy in writing thereof to the holder of such Permitted Mortgage. A failure on the part of the Landlord to give such notice to the holder of any Permitted Mortgage shall not affect the validity and effectiveness of the notice to the Tenant according to the notice provisions of **Section 10.9**. Each holder of a Permitted Mortgage will have the same period after the giving of such notice to the holder of a Permitted Mortgage for remedying the default or causing the same to be remedied as is given the Tenant after notice to the Tenant, plus an additional thirty (30) calendar days. The Landlord agrees to accept such performance on the part of such holder of a Permitted Mortgage as though the same had been done or performed by the Tenant.

### **9.4. Notice to Tax Credit Investor.**

If applicable, so long as any tax credit investor is a limited partner of the Tenant and has notified the Landlord in writing of such tax credit investor's name and address, the Landlord agrees, simultaneously with the giving of each notice hereunder, to give a duplicate copy thereof to such tax credit investor; provided that a failure on the part of the Landlord to give such notice to the such tax credit investor shall not affect the validity and effectiveness of the notice to the Tenant. Each tax credit investor will have the same period after the giving of the notice aforesaid to such tax credit investor for remedying the default or causing the same to be remedied as is given the Tenant after notice to such tax credit investor plus an additional thirty (30) calendar days, and the Landlord agrees to accept such performance on the part of such tax credit investor as though the same had been done or performed by the Tenant.

### **9.5. Leasehold Mortgagee's Opportunity to Foreclose.**

The Landlord agrees that it will take no action to effect a termination of this Lease by reason of any Event of Default without first giving to each holder of a Permitted Mortgage who has complied with the provisions of **Section 9.9** reasonable time within which either to (a) obtain possession of the Premises and the Project (including possession by a receiver) and to cure such Event of Default in the case of an Event of Default which cannot be cured unless and until such holder has obtained possession; or (b) institute foreclosure proceedings and to complete such foreclosure, or otherwise to acquire the Tenant's interest under this Lease with diligence and without delay in the case of an Event of Default that cannot be cured by such holder; provided, that nothing herein shall preclude the Landlord from exercising any rights or remedies under this Lease with respect to any other Event of Default by the Tenant during any period of such Landlord forbearance.

### **9.6. (If applicable) Tax Credit Investor's Opportunity to Replace the Tenant's General Partner.**

The Landlord agrees that it will take no action to effect a termination of this Lease by reason of any Event of Default without first giving to each tax credit investor (if applicable) who has provided the Landlord with written notice of such tax credit investor's name and address

reasonable time, not to exceed ninety (90) calendar days, to replace the Tenant's general partner and cause the new general partner to cure such default. Provided, that: (a) as a condition of such forbearance, the Landlord must receive notice of the substitution of a new general partner of the Tenant within thirty (30) calendar days following notice to the tax credit investor; (b) the Tenant, following such substitution of general partner, shall thereupon proceed with due diligence to cure such Event of Default; and (c) if the Event of Default relates to the completion of construction of the Premises, the Project, or any part thereof or occupancy thereof, the extended cure period shall be limited to the period, if any, prior to the date by which the Premises, the Project, and parts thereof must be placed in service in order to preserve LIHTCs for the Premises, the Project, and parts thereof.

#### **9.7. Leasehold Mortgagee's Right to New Lease.**

In the event of the termination of this Lease prior to this Lease's stated expiration date (except pursuant to **Article VI** hereof), the Landlord agrees; provided that any Event of Default has been cured by the entitled party pursuant to **Section 9.5** and/or **Section 9.6** above, that it will enter into a new lease of the Premises and the Project with such holder or, at the request of such holder, with an entity formed by or on behalf of such holder, over which the holder has control, for a period equal to the remainder of the Term, which is effective as of the date of such termination, at the Base Rent and Additional Rent and upon the covenants, agreements, terms, provisions, and limitations herein contained; provided, however, such holder (a) makes written request upon the Landlord for such new lease within sixty (60) calendar days from the date of notice of such termination; and (b) pays or causes to be paid to the Landlord at the time of the execution and delivery of such new lease any and all sums that would at the time of the execution and delivery thereof be due under this Lease but for such termination, and pays or causes to be paid any and all expenses including reasonable counsel fees, court costs, and costs and disbursements incurred by the Landlord in connection with any such termination and in connection with the execution and delivery of such new lease, less the net income from the Premises and the Project collected by the Landlord subsequent to the date of the termination of this Lease and prior to the execution and delivery of such new lease. If the Landlord receives more than one written request for a new lease in accordance with the provisions of this **Section 9.7**, then such new lease shall be entered into pursuant to the request of the 1<sup>st</sup> lien leasehold mortgagee, and the rights hereunder of any leasehold mortgagee whose Permitted Mortgage is subordinate to the 1<sup>st</sup> lien holder's Permitted Mortgage shall be null and void and of no further force or effect.

Any new lease made pursuant to this **Section 9.7** shall be and remain an encumbrance on the fee title to the Premises having the same priority thereon as this Lease, and shall without implied limitation be and remain prior to any mortgage or any lien, charge, or encumbrance of the fee of the Premises created by the Landlord.

#### **9.8. No Modification.**

This Lease shall not be modified by the Landlord and the Tenant without the prior written consent of each party hereto, and if required, HUD.



### **9.9. Notice.**

The foregoing provisions of this **Article IX** shall not apply in favor of any mortgage holder unless, before the Landlord has mailed a notice of default under **Article IX**, such mortgage holder has duly recorded such holder's mortgage or notice thereof in any public office where such recording may be required in order to charge third persons with knowledge thereof and has given written notice to the Landlord accompanied by a certified copy of such mortgage and stating the name of such holder and the address to which notices to such holder are to be mailed by the Landlord. The Landlord acknowledges receipt of such notice with respect to the Permitted Mortgages set forth in Exhibit D.

## **ARTICLE X MISCELLANEOUS**

### **10.1. Construction.**

The Landlord and the Tenant agree that all the provisions hereof are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate Section thereof.

### **10.2. Performance Under Protest.**

In the event of a dispute or difference between the Landlord and the Tenant as to any obligation that either may assert in good faith the other is obligated to perform or do, then the party against whom such obligation is asserted shall have the right and privilege to carry out and perform the obligation so asserted against it without being considered a volunteer or deemed to have admitted the correctness of the claim, and shall have the right to bring an appropriate action at law, equity, or otherwise against the other for the recovery of any sums expended in the performance thereof and in any such action, the successful party shall be entitled to recover in addition to all other recoveries such reasonable attorneys' fees as may be awarded by a court of competent jurisdiction.

### **10.3. No Waiver**

Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of said party's rights hereunder. No waiver by either party at any time, express or implied, of any breach of any other provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. If any action by either party shall require the consent or approval of the other party, the other party's consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion or a consent to or approval of any other action on any subsequent occasion. Except as expressly limited by the terms of this Lease, any and all rights and remedies that either party may have under this Lease or by operation of law, either at law or in equity, upon any breach, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other; and no one of them whether exercised by said party or not, shall be deemed to be in exclusion of any other; and two or more or all of such rights and remedies may be exercised at the same time.

#### **10.4. Headings.**

The headings used for the various Articles and Sections of this Lease are used only as a matter of convenience for reference, and are not to be construed as part of this Lease or to be used in determining the intent of the parties of this Lease.

#### **10.5. Partial Invalidity.**

If any terms, covenant, provision, or condition of this Lease or the application thereof to any person or circumstances shall be declared invalid or unenforceable by the final ruling of a court of competent jurisdiction having final review, the remaining terms, covenants, provisions, and conditions of this Lease and their application to persons or circumstances shall not be affected thereby and shall continue to be enforced and recognized as valid agreements of the parties, and in the place of such invalid or unenforceable provision there shall be substituted a like, but valid and enforceable, provision mutually agreeable to the Landlord and the Tenant that comports to the findings of the aforesaid court and most nearly accomplishes the original intention of the parties.

#### **10.6. Bind and Inure.**

Unless repugnant to the context, the words “**Landlord**” and “**Tenant**” shall be construed to mean the original parties, their respective successors and permitted assigns and those claiming through or under them, respectively. Subject to the provisions of **subsection 5.1.2**, the agreements and conditions in this Lease contained on the part of the Tenant to be performed and observed shall be binding upon the Tenant and the Tenant’s successors and permitted assigns and shall inure to the benefit of the Landlord and the Landlord’s successors and assigns, and the agreements and conditions in this Lease contained on the part of the Landlord to be performed and observed shall be binding upon the Landlord and the Landlord’s successors and assigns and shall inure to the benefit of the Tenant and the Tenant’s successors and permitted assigns. The Landlord agrees that no individual partner, trustee, stockholder, officer, employee, or beneficiary of the Tenant shall be personally liable under this Lease, subject to the Landlord’s right to look to the Tenant’s interest in the Premises and the Project and the Tenant’s personal property owned and used in connection with the Premises in pursuit of the Landlord’s remedies upon an Event of Default hereunder, and the general assets of the individual partners, trustees, stockholders, officers, employees, or beneficiaries of the Tenant shall not be subject to levy, execution, or other enforcement procedure for the satisfaction of the remedies of the Landlord; provided that the foregoing provisions of this sentence shall not constitute a waiver of any obligation evidenced by this Lease and provided further that the foregoing provisions of this sentence shall not limit the right of the Landlord to name the Tenant, individual partners, trustees, affiliate, stockholder, officer, employee, or beneficiary of the Tenant as a party defendant in any action or suit in connection with this Lease so long as no personal money judgment shall be asked for or taken against any individual partner, affiliates, trustee, stockholder, officer, employee, or beneficiary of the Tenant. No holder of a Permitted Mortgage of the leasehold interest hereunder shall be deemed to be the holder of said leasehold estate until such holder shall have acquired title to said leasehold estate.



#### **10.7. Estoppel Certificate.**

Each party agrees from time to time, upon no less than twenty (20) calendar days' prior notice from the other or upon request from any leasehold mortgagee or any permitted assignee, to execute, acknowledge, and deliver to the other or to such mortgagee or assignee a statement certifying that (i) this Lease is unmodified and in full force and effect (or, if there have been any modifications, that the same is in full force and effect as modified and stating the modifications); (ii) the dates to which the rent has been paid, and that no additional rent or other payments are due under this Lease (or if additional rent or other payments are due, the nature and amount of the same); and (iii) whether there exists any uncured default by the other party, or any defense, offset, or counterclaim against the other party, and, if so, the nature of such default, defense, offset, or counterclaim. Any such statement delivered pursuant to this **Section 10.7** may be relied upon by any prospective purchaser or holder of a mortgage of the leasehold interest hereunder from the Tenant or any prospective assignee of any such holder of a mortgage.

#### **10.8. Recordable Form of Lease.**

Simultaneously with the delivery of this Lease the parties have delivered a notice or short form of this Lease, which the Tenant shall record in the public office in which required to put third parties on notice. If this Lease is terminated before the Term expires, the parties shall execute, deliver, and record an instrument acknowledging such fact and the date of termination of this Lease.

#### **10.9. Notice.**

Every notice and demand required or permitted to be given under this Lease shall be in writing and deemed to have been duly given when deposited with the United States mail, postage prepaid by certified or registered mail, with return receipt requested, or when deposited with a recognized overnight courier service addressed.

In the case of notice to or demand upon the Landlord, it shall be sent to:

Boston Housing Authority  
52 Chauncy Street  
Boston, MA 02111  
Attn: Administrator

With a copy to:  
Boston Housing Authority  
52 Chauncy Street  
Boston, MA 02111  
Attn: General Counsel

In the case of notice to or demand upon the Tenant, it shall be sent to:

\_\_\_\_\_

With a copy to:

---

**10.10. Entire Agreement.**

This instrument, together with, if applicable, Section 42 of the Code and all other documents referred to herein, contain all the agreements made between the parties hereto and may not be modified in any manner than by an instrument in writing executed by the parties or their respective successors in interest and to which each leasehold mortgagee, if necessary, and if required, by HUD has consented in writing.

**10.11. Governing Law.**

This Lease, and the rights and obligations of the parties hereunder, shall be governed by and construed in accordance with the substantive laws of the Commonwealth of Massachusetts.

**10.12. Disclaimer of Relationship.**

(a) The Tenant and the Landlord acknowledge that the proposed transfer to the Tenant, or to any other participating party in the Project, of federal funds for the development and operation of the Units covered under this Lease shall not be deemed to be an assignment of such funds. Accordingly, neither the Tenant, nor any other participating party, shall succeed to any rights or benefits of the Landlord regarding any such funding. The Tenant further agrees to include this disclaimer in each of the Tenant's agreements or contracts with any partner, participating party, or any other party involving the use of federal funds for the Project.

(b) Nothing contained in any agreement between the Landlord and the Tenant, nor any act of HUD or the Landlord, shall be deemed or construed to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, or joint venture involving HUD. The Tenant further agrees to include this disclaimer in each of the Tenant's agreements or contracts with any partner, participating party, or any other party involving the use of federal funds for the Project.

**10.13. Venue.**

Any action or proceeding arising hereunder shall be brought exclusively in the courts of the Commonwealth of Massachusetts; provided, however, that if any such action or proceeding arises under the Constitution, laws, or treaties of the United States of America, or if there is a diversity of citizenship between the parties thereto, or any other causes establishing federal jurisdiction, so that it is to or may be brought in the United States District Court, it shall be brought in a United States District Court having jurisdiction for the Commonwealth of Massachusetts.

#### **10.14. Time of Essence.**

Time is of the essence in regard to all of the Tenant's and the Landlord's performance under this Lease.

### **ARTICLE XI RIGHT OF FIRST OFFER; RIGHT OF FIRST REFUSAL**

#### **11.1. Landlord's Intent to Market Premises.**

If the Landlord, in its sole discretion, decides to sell its interest in the Premises, then, prior to marketing such interest, the Landlord shall give written notice of such intent to the Tenant and any Permitted Mortgagees setting forth the terms and conditions on which the Landlord desires to sell the Premises (the "**Sales Notice**"). The parties agree that any such sale to a third party shall be subject to all terms and conditions of this Lease and any other Legal Requirements. The Tenant shall have sixty (60) calendar days thereafter within which to notify the Landlord of its intent to purchase such interest offered for sale upon such terms and conditions as are set forth in the Sales Notice. If such notice to purchase is timely given, the closing shall be ninety (90) calendar days after the date of the Sales Notice. The status of title to be delivered and the instruments to be executed pursuant thereto shall be as stated in the Sales Notice as well as any amount of earnest money that the Tenant shall be required to deposit with the notification of intent to purchase. Failure of the Tenant to so notify the Landlord in a timely manner shall be deemed an election not to purchase. In the event the Tenant does not so timely notify the Landlord of its intent to purchase the offered property upon the terms and conditions stated in the Sales Notice, the Landlord shall be free to market such property on its own or through a broker and thereafter may sell the property, subject to all of the terms and conditions of this Lease; provided that the Landlord may not sell such interest on terms and conditions that are materially different from those contained in any Sales Notice received by the Tenant without first offering the Tenant the opportunity once again to purchase such interest in accordance with this **Section 11.1** upon such materially different terms and conditions upon which the Landlord bases its offer of sale.

#### **11.2. Right of First Refusal.**

If the Landlord is not marketing the Premises as provided in **Section 11.1** above, but receives a written offer in acceptable form from an unrelated third party that the Landlord is willing to accept for the purchase of the Premises (a "**Sales Offer**"), the Landlord shall notify the Tenant and any Permitted Mortgagee of the terms and conditions of such Sales Offer. The Tenant shall then have sixty (60) calendar days within which to notify the Landlord of its intent to purchase the Premises by matching said Sales Offer and, in the event of such timely response, the closing of the purchase and sale of the Premises shall be in accordance with the terms of such Sales Offer, provided that the closing shall not occur less than one hundred and twenty (120) days after the Sales Offer. In the event that timely notice is not given by the Tenant to the Landlord, the Tenant shall be deemed to have elected not to match said Sales Offer, and the Landlord shall be free to sell the Premises to such third party on the terms and conditions set forth in the Sales Offer, subject, however, to all terms and conditions of this Lease, and the Legal Requirements. If the Landlord fails to sell the Premises to such third party in accordance with the terms of the Sales Offer within one hundred and eighty (180) calendar days after the Landlord is entitled to sell the Premises to

such third party, the right of first refusal created in this **Section 11.2** shall be revived and again shall be enforceable.

**11.3. Sale to Affiliate or to Public Agency.**

The rights of the Tenant under **Sections 11.1** and **11.2** above shall not apply to a proposed sale of the Premises by the Landlord to any non-profit affiliate of the Landlord, or to any other agency or instrumentality of the City of Boston or other body politic and corporate (whether federal, state, or local) whose purpose relates to the development, rental, or operation of affordable housing.

[SIGNATURES ON NEXT PAGE]

INFORMATIONAL COPY

EXECUTED as a sealed instrument on the day and year first above written.

LANDLORD:

TENANT:

**BOSTON HOUSING AUTHORITY**

**[INSERT NAME]**

By: \_\_\_\_\_  
William E. McGonagle, Administrator

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

INFORMATIONAL COPY

**GROUND LEASE**

**between**

**BOSTON HOUSING AUTHORITY**

**and**

**[INSERT NAME]**

**Exhibit A**

**Description of Premises**

INFORMATIONAL COPY

# GROUND LEASE

between

**BOSTON HOUSING AUTHORITY**

and

[INSERT NAME]

## Exhibit B

### Definitions

The following terms shall have the following definitions in this Lease, unless defined elsewhere in the text of this Lease:

(a) “**Act**” shall mean the United States Housing Act of 1937 (42 U.S.C. § 1437, *et seq.*), as amended from time to time, any successor legislation, and all implementing regulations issued thereunder or in furtherance thereof.

(b) “**Additional Rent**” shall mean the additional rental payment due from the Tenant to the Landlord as set forth in **Section 3.2** of this Lease

(c) “**Award**” shall have the meaning in **Section 6.7** herein.

(d) “**Base Interest Rate**” shall mean the prime rate published from time to time by the Wall Street Journal, plus two percent (2%) per annum, but in no event greater than the legal rate of interest.

(e) “**Base Rent**” shall mean the annual rental payment due from the Tenant to the Landlord in the amount set forth in **Section 3.1.1** of this Lease.

(f) “**Code**” shall mean Section 42 of the Internal Revenue Code, as amended from time to time, any successor legislation, and all implementing regulations issued thereunder or in furtherance thereof.

(g) “**Commencement Date**” shall mean the date of this Lease, as stated in Section 1.1 of this Lease.

(h) “**Compliance Period**” shall mean the period specified in Section 42(i)(1) of the Internal Revenue Code with respect to such building and when used with respect to the Project as a whole, means the period starting with the beginning of the first period under Section 42(i)(1) to start for any building in the Project and ending with the end of the last period under Section 42(i)(1) to end for any building in the Project.

(i) **“Force Majeure”** shall mean any (a) strike, lock-out or other labor troubles, (b) governmental restrictions or limitations, (c) failure or shortage of electrical power, gas, water, fuel oil, or other utility service, (d) riot, war, insurrection, or other national or local emergency, (e) accident, flood, fire or other casualty, (f) adverse weather conditions resulting in stoppage of work on the Project in excess of one (1) week, (g) other act of God, (h) inability to obtain a building permit or a certificate of occupancy, notwithstanding having fulfilled all requirements, conditions and obligations in regard thereto, or (i) other cause similar or dissimilar to any of the foregoing and beyond the reasonable control of the Tenant.

(j) **“Governing Documents”** shall mean the HAP and all Permitted Mortgages.

(k) **“HAP”** shall have the meaning in **Section 1.1** herein.

(l) **“HUD”** shall mean the United States Department of Housing and Urban Development, its successors and assigns.

(m) **“Institutional Lender”** shall be a savings bank, commercial bank, trust company, savings and loan association, insurance company, real estate investment trust, pension trust or fund established for a corporation listed on the New York or American Stock Exchange, for state or municipal employees or for a national trade union, an agency or authority of any federal, state, or local government, any quasi-public entity, and any private or nonprofit entity which provides financing for affordable housing.

(n) **“Knowledge”** shall mean, in regard to the Landlord, the actual knowledge of the Administrator or General Counsel of the Landlord.

(o) **“Lease”** shall mean this agreement as the same shall be amended from time to time.

(p) **“Lease Year”** shall be, in the case of the first lease year, the period from the Commencement Date through December 31st of the year that includes the Commencement Date; thereafter, each successive twelve-calendar month period following the expiration of the first lease year of the Term, except that in the event of the termination of this Lease on any day other than the last day of a Lease Year then the last Lease Year of the Term shall be the period from the end of the preceding Lease Year to such date of termination.

(q) **“Legal Requirements”** shall mean all laws, statutes, ordinances, orders, codes, rules, regulations, and requirements of all federal, state, and local governmental or quasi-governmental entities, subdivisions, agencies, authorities, or instrumentalities and the appropriate officers, departments, boards, and commissions thereof applicable to the Premises and/or the Project.

(r) **“LIHTC Units”** shall mean those Units subject to the Tax Credit Requirements.

(s) **“Occupant”** shall mean any tenant, under a lease directly with the Tenant, in lawful occupancy of any Unit located on the Premises.



(t) **“Operating Expenses”** shall mean all costs and expenses attributable to or incurred in connection with the development, construction, completion, marketing, leasing, maintenance, management, insuring and occupancy of the Premises and the Project, including without limitation (a) all energy sources for the Project, such as propane, butane, natural gas, steam, electricity, solar energy and fuel oil; (b) all water, sewer, and trash disposal services; (c) all maintenance, repair, replacement, and rebuilding of the Project; (d) landscaping, maintenance, repair, and striping of all parking areas; (e) all insurance premiums relating to the Premises and the Project, including fire and extended coverage, public liability insurance, rental insurance, and all risk insurance; and (f) all costs and expenses of all capital improvements or repairs (whether structural or non-structural) required to maintain the Project in good order and repair including but not limited to any required by any governmental or quasi-governmental authority (excluding the Landlord) having jurisdiction over the Premises or the Project.

(u) **“Permitted Mortgages”** shall mean mortgages held by any Institutional Lender, to which the Landlord has consented in writing pursuant to the criteria set forth in Section 9.2 of the Lease, including but not limited to the leasehold mortgages described in Exhibit D hereto.

(v) **“Permitted Mortgagees”** shall mean any holder of a Permitted Mortgage.

(w) **“Project-Based Voucher Requirements”** shall mean any and all matters required by Section 8 of the Act (as implemented by 24 CFR part 983), including without limitation the HAP.

(x) **“Project-Based Voucher Units”** shall mean those Units subject to the Project-Based Voucher Requirements.

(y) **“Real Estate Impositions”** shall have the meanings in Section 3.2.1 herein.

(z) **“Substantial Completion,”** in reference to the Project on the Premises, shall mean the issuance of certificates of occupancy for such Project or particular buildings thereof.

(aa) **“Taking”** shall mean any taking of the title to, access to, or use of all or any part of the Premises and/or the Project, or any interest therein or right accruing thereto, as a result of the exercise of the right of condemnation or eminent domain or a change in grade affecting the Premises or any part thereof. A conveyance in lieu of or in anticipation of the exercise of any such right of condemnation or eminent domain shall be considered a Taking. Any such Taking shall be deemed to have occurred upon the earlier to occur of (a) the date on which the property, right or interest so taken must be surrendered to the condemning authority, or (b) the date title vested in a condemning authority or other party pursuant to any Taking. Takings may be total or partial, permanent or temporary.

(bb) **“Tax Credit Requirements”** shall mean any and all matters required by Section 42 of the Internal Revenue Code of 1986, as amended from time to time, and any successor legislation, and any implementing regulations, or the agreement containing restrictive covenants which will be recorded against the Project in accordance with said Code.

(cc) “**Tenant Fiscal Year**” shall mean the fiscal year as agreed to between the Landlord and the Tenant.

(dd) “**Units**” shall have the meaning in **Section 1.1** herein.

(ee) “**Work**” shall mean all services, labor, materials, equipment, and supplies necessary or desirable to complete the Project, including, but not limited to, the design, engineering, construction, testing, financing, sale, or rent-up for the Project upon the terms, covenants, and conditions contained in the Governing Documents.

INFORMATIONAL COPY

**Exhibit C**

**Budget**

INFORMATIONAL COPY

**Exhibit D**

**Permitted Leasehold Mortgages**

**Each of the mortgages referenced in Exhibit E (Permitted Encumbrances)**

INFORMATIONAL COPY

**Exhibit E**

**Permitted Encumbrances**