

**HOUSING AUTHORITY OF THE CITY OF OAKLAND  
PURCHASE ORDER TERMS AND CONDITIONS FOR  
MICRO & SMALL PURCHASE OF SERVICES**

**PART A. STANDARD TERMS AND CONDITIONS**

Service Provider is subject to the following standard purchase order terms and conditions (Terms and Conditions) for the delivery of services and scope of work (collectively herein “Services” or “Work”) to the Housing Authority of the City of Oakland (OHA) regardless of funding source:

**1. Offer/Acceptance; Conflicting Terms.** Upon acceptance by OHA, a solicitation, bid, proposal, or price quotation and the resulting Purchase Order (collectively, this “Order”) shall be deemed a binding contract (“Contract”) upon Service Provider’s commencement of performance. This Order constitutes the sole and entire agreement of the parties with respect to this Order and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties with respect to the subject matter of this Order. If any term and condition listed herein is in conflict with any other term and condition imposed by OHA for the purchase of the subject Work, OHA shall decide which terms and conditions apply.

**2. Price and Payment.** Service Provider shall submit invoices to OHA for payment in arrears of work being performed. Service Provider shall invoice OHA for this Order within 30 days of completion of Work, but not more frequently than once per calendar month. Invoices must include an invoice number, description of the goods/service, correct purchase order number, delivery location of goods/services, name of staff that placed the order, and the vendor name on the invoice must be the same as on the purchase order. Invoices shall be prepared and submitted to the "Bill To" address shown on the Order. Unless otherwise stated in this Order, OHA will pay all properly invoiced amounts due to Service Provider within 30 days after receipt of such invoice, except for any amounts withheld for retention or disputed by OHA. The parties shall seek to resolve all such disputes expeditiously and in good faith. Service Provider shall continue performing its obligations under this Order notwithstanding any such dispute. Without prejudice to any other right or remedy, OHA reserves the right to set off any amount owing to it by Service Provider against any amount payable by OHA to Service Provider. Payment of an invoice is not evidence or admission that the Work meets the requirements of this Order.

**3. Changes.** OHA may at any time, by written order, make changes within the general scope of the services to be performed or supplies to be delivered. No services for which an additional fee is charged by the Service Provider shall be furnished without the prior written consent of OHA. Any additional services performed by or supplies delivered by Service Provider shall be subject to these Terms and Conditions.

**4. Conflicts of Interest.** Service Provider warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this Order and a Service Provider's organizational, financial, contractual or other interests are such that (i) award of this Order may result in an unfair competitive advantage, or (ii) Service Provider's objectivity in performing the contract work may be impaired. Service Provider agrees that if after award it discovers an organizational conflict of interest with respect to this

Order, he or she shall make an immediate and full disclosure in writing to the Contract, Compliance and General Services Department, which shall include a description of the action which Service Provider has taken or intends to take to eliminate or neutralize the conflict. OHA may, however, terminate this Order for the convenience of OHA if it would be in the best interest of OHA. In the event the Service Provider was aware of an organizational conflict of interest before the award of this Order and intentionally did not disclose the conflict to OHA, OHA may terminate this Order for default.

**5. Assignment.** Service Provider shall not assign any part of this Order without prior written consent of OHA.

**6. Contract Termination; Debarment.** A material breach of these clauses may be grounds for termination of this Order and for debarment or denial of participation as a Service Provider or subcontractor in future OHA procurements.

**7. Inspection and Acceptance.** OHA has the right to review, require correction, if necessary, and accept the Work as provided by the Service Provider. Such review(s) shall be carried out within a reasonable timeframe so as to not impede the Work of the Service Provider. The Service Provider shall make any required corrections promptly at no additional charge. Revised or corrected work product shall be submitted to OHA within 7 days of notification or a later date if extended by OHA. Failure by the Service Provider to proceed with reasonable promptness to make necessary corrections shall be a default. If the Service Provider's submission of corrected Work remains unacceptable, OHA may terminate this Order or reduce the contracted price to reflect the reduced value of Work received.

**8. General Indemnification for Design Professionals.**<sup>1</sup> To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782), Service Provider shall defend (with legal counsel reasonably acceptable to OHA) hold harmless and indemnify OHA and its officers, employees, commissioners, servants, agents, successors, assigns, instrumentality entities, subsidiaries and related non-profit corporations, as well as the directors, officers, employees, commissioners, servants, agents, successors, and assigns of OHA's instrumentality entities, subsidiaries, and related non-profit corporations (collectively, "Indemnified Parties") from and against all claims, actions, lawsuits, complaints, demands, damages, liabilities, losses, obligations, taxes, settlements, judgments, costs or expenses, including without limitation reasonable attorney fees and costs, whether or not involving a third party claim, which arise out of, relate to, or result from (i) the intentional act or failure to act or the negligent performance of Work under this Order, or any part thereof, or (ii) any intentional or negligent act, omission, recklessness or willful misconduct of Service Provider, and any of Service Provider's subcontractors, and anyone directly or indirectly employed or controlled by Service Provider or any of Service Provider's subcontractors in furtherance of, related to or during the performance of this Order. Service Provider's obligations set forth above shall survive the expiration or termination of this Order, as well as any option term. OHA does not, and shall not, waive any rights that it may have against Service Provider by reason of the acceptance by OHA, or the deposit with OHA, of any insurance policies or endorsements

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<sup>1</sup> "Design professional" refers to the entire range of professionals set forth in Civil Code §2782.8(c) including licensed architects, licensed landscape architects, registered professional engineers and licensed professional land surveyors.

required pursuant to this Order. This indemnification provision shall apply regardless of whether or not said insurance policies or endorsements are determined to be applicable to any claims, actions, lawsuits, complaints, demands, damages, liabilities, losses, obligations, taxes, settlements, judgments, costs or expenses described above.

**9. General Indemnification for other than Design Professionals.** (a) The Service Provider shall hold harmless, indemnify and defend OHA and its officers, employees, commissioners, servants, agents, successors, assigns, instrumentality entities, subsidiaries and related non-profit corporations, as well as the directors, officers, employees, commissioners, servants, agents, successors, and assigns of OHA's instrumentality entities, subsidiaries, and related non-profit corporations (collectively, "Indemnified Parties") from and against all claims, actions, lawsuits, complaints, demands, damages, liabilities, losses, obligations, taxes, settlements, judgments, costs or expenses (including without limitation reasonable attorney fees and costs), whether or not involving a third party claim, which arise out of, relate to, or result from (i) any breach of any representation or warranty of Service Provider contained in this Order; (ii) any breach of any covenant or other obligation or duty of the Service Provider under this Order or under applicable law; and/or (iii) any acts or omissions by Service Provider or subcontractor of any tier, in each case whether or not caused by the negligence of OHA or any other Indemnified Party, and whether or not the relevant claim has merit. This indemnification provision shall not apply to any claims resulting solely from the gross negligence or willful misconduct of OHA, OHA's officers, employees, commissioners, servants, agents, successors, assigns, instrumentality entities, subsidiaries, and related non-profit corporations, or the directors, officers, employees, commissioners, servants, agents, successors, and assigns of OHA's instrumentality entities, subsidiaries, and related non-profit corporations. The Service Provider's obligations set forth above shall survive the expiration or termination of the Term of this Order, including any option term.

(b) OHA does not, and shall not waive any rights that it may have against the Service Provider by reason of the acceptance by OHA, or the deposit with OHA, of any insurance policies or endorsements required pursuant to this Order. This indemnification provision shall apply regardless of whether or not said insurance policies or endorsements are determined to be applicable to any claims, actions, lawsuits, complaints, demands, damages, liabilities, losses, obligations, taxes, settlements, judgments, costs or expenses described above.

**10. Indemnification for Patent and Copyright Infringement.** (a) Service Provider shall defend (with legal counsel reasonably acceptable to OHA), indemnify and hold harmless OHA and its officers, employees, commissioners, servants, agents, successors, assigns, instrumentality entities, subsidiaries and related non-profit corporations, as well as the directors, officers, employees, commissioners, servants, agents, successors, and assigns of OHA's instrumentality entities, subsidiaries, and related non-profit corporations (collectively, "Indemnified Parties") from and against all claims, actions, lawsuits, complaints, demands, damages, liabilities, losses, obligations, taxes, settlements, judgments, costs or expenses, including without limitation reasonable attorney fees and costs, that may at any time arise for any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons now or hereafter issued.

(b) OHA will give prompt written notice to Service Provider of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Service Provider shall keep OHA informed of all developments in the defense of such actions.

(c) If OHA is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Service Provider shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Service Provider cannot so procure such right within a reasonable time, Service Provider shall promptly, at Service Provider's option and at Service Provider's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with work that does not infringe or violate any such patent or copyright.

(d) The obligations set forth in this Indemnification for Patent and Copyright Infringement clause shall constitute the sole agreement between the parties relating to liability for infringement of violation of any patent or copyright.

**11. Independent Contractor.** Service Provider shall, during the performance of the Work, act as a wholly independent contractor. Neither OHA nor any of its officers, employees, servants or agents shall have control over the conduct of Service Provider or its employees or agents, except to advise or provide direction as required. Service Provider shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner employees of OHA. Nothing contained in this Order shall be deemed, construed or represented by OHA or Service Provider or by any third person to create the relationship of principal or agent, or of a partnership, or of a joint venture, or of any other association of any kind or nature between OHA and Service Provider. Except as otherwise required by law, OHA shall not be called upon to assume any liability for the direct payment of any salary, wage or other compensation to any person employed by Service Provider performing Work hereunder for OHA.

**12. Other Service Providers.** OHA may undertake or award other contracts for additional Work at or near the site(s) of the Work. Service Provider shall fully cooperate with the other Service Providers (sometimes referred to as "Separate Service Providers") and with OHA employees and shall carefully adapt scheduling and performing the Work under this Order to accommodate the additional Work, heeding any direction that may be provided by the Contracting Officer. The Service Provider shall not commit or permit any act that will interfere with the performance of Work by any other Service Provider or OHA employee.

**13. Warranty of Title.** Service Provider warrants good title to all materials, supplies, and equipment incorporated in the Work.

**14. Insurance.** For the duration of the term of this Order, Service Provider shall maintain insurance against claims for injuries to persons or damages to property that may arise from the performance of this Order by Service Provider, or its agents, employees, or subcontractors as follows: (a) General Liability-\$1,000,000 per occurrence for bodily injury, personal injury, and property damage; (b) Automobile liability-\$1,000,000 per accident for bodily injury and property damage;(c) Workers' Compensation as required by State statute. Both policies (a) and (b) shall contain, or be endorsed to contain, that OHA is covered as an additional insured with respect to liability resulting from the performance of the Order. Prior to performing in accordance with this Order, Service Provider shall submit to OHA original certificates and endorsements evidencing coverage required by this section, which coverage shall be issued by an insurance carrier admitted to the State of California having an A M BEST rating of not less than A: VIII (A:8), unless waived in writing by OHA's Risk Manager.

- The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).
- For any claims related to this project, the Contractor's insurance coverage shall be primary and non-contributory insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.
- Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with 30 days prior notice to the Entity.
- *Acceptability of Insurers*  
Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the Entity.
- *Waiver of Subrogation*  
Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.
- *Verification of Coverage*  
Contractor shall furnish the Entity with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these

specifications, at any time. Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

- *Subcontractors*

Contractor shall require and verify that all subcontractors maintain insurance meeting all requirements stated herein, and Contractor shall ensure that Entity is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

**15. Underlying Indemnity and Insurance.** Service Provider shall be responsible for requiring indemnification and insurance from its consultants, agents and subcontractors, if any, in the same amounts required of Service Provider by OHA, to protect the Service Provider's and OHA's interests, and for ensuring that such persons comply with any applicable insurance statutes. Service Provider shall provide OHA with proof of compliance with this provision upon demand.

**16. Ownership of Results/Work for Hire.** (a) Any interest (including, but not limited to, property interests and copyright interests) of Service Provider or its subcontractors, in drawings, plans, specifications, studies, reports, memoranda, computational sheets or other documents (including but not limited to, electronic media) prepared by Service Provider or its subcontractors in connection with Work to be performed under this Order shall become the property of and will be transmitted to OHA at the conclusion of this Order. Service Provider may, however, retain one copy for its files.

(b) Any and all artworks, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any original works of authorship created by Service Provider or its subcontractors in connection with Work performed under this Order shall be Works for Hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of OHA. In the event that it is ever determined that any works created by Service Provider or its subcontractors under this Order are not Works for Hire under U.S. law, Service Provider hereby assigns all copyrights to such works to OHA. With the prior written approval of OHA, Service Provider may retain and use copies of such works for reference and as documentation of its experience and capabilities.

(c) After the completion of the Work, Service Provider shall not permit any reproductions to be made of any OHA-owned documents without the written approval of OHA and shall refer all requests for such documents by other persons to OHA.

**17. Examination and Retention of Service Provider's Records.** HUD, OHA, or any of its duly authorized representatives shall, until 5 years after final payment under this Order, have access to and the right to examine any of the Service Provider's directly pertinent books, documents, papers, or other records involving transactions related to this Order for the purpose of making audit, examination, excerpts, and transcriptions.

**18. Taxes.** Service Provider and subcontractors are responsible for paying all sales, consumer, business license, use, income and payroll, and similar taxes for the Work or portions thereof provided by Service Provider and subcontractors.

**19. Project Staff.** Service Provider shall employ a complete and competent project staff for the duration of the Work. Upon notice from OHA requesting replacement of any project staff member who is unsatisfactory to OHA, Service Provider shall in a timely manner, but in no event longer than 3 days after notification, replace such member with a competent member satisfactory to OHA. Failure by Service Provider to comply with the provisions of this paragraph shall entitle OHA, at its option exercised in its sole discretion, to terminate this Order or suspend the Work until Service Provider complies with this paragraph. All costs or damages associated with such termination or suspension shall be borne by Service Provider, without adjustment in the contract amount or time for completion.

**20. Termination for Cause and for Convenience.** (a) OHA may terminate this Order in whole, or from time to time in part, for OHA's convenience or the failure of the Service Provider to fulfill the Contract obligations (for cause/default). OHA shall terminate by delivering to the Service Provider a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Service Provider shall: (i) immediately discontinue all services affected (unless the notice directs otherwise), and (ii) deliver to OHA all information, reports, papers, and other materials accumulated or generated in performing the Order, whether completed or in process.

(b) If the termination is for the convenience of OHA, OHA shall be liable only for payment for services rendered before the effective date of the termination.

(c) If the termination is due to the failure of the Service Provider to fulfill its obligations under this Order (for cause/default), OHA may (i) require the Service Provider to deliver to it, in the manner and to the extent directed by OHA, any work described in the Notice of Termination; (ii) take over the work and prosecute the same to completion, and the Service Provider shall be liable for any additional cost incurred by OHA; and/or (iii) withhold any payments to the Service Provider for the purpose of set-off or partial payment, as the case may be, of amounts owed to OHA by the Service Provider. In the event of termination for cause/default, OHA shall be liable to the Service Provider for reasonable costs incurred by Service Provider before the effective date of the termination. Any dispute shall be decided by OHA's Contracting Officer.

**21. Resolution of Disputes.** Written claims by the Service Provider shall be given within a reasonable time, not to exceed 7 calendar days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request. If disputes or disagreements arise, Service Provider and OHA each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work. The Service Provider shall proceed diligently with performance of this Order, pending final resolution of any request for relief, claim, appeal, or action arising under the Order.

**22. Reporting Requirements.** Service Provider, at such times and in such forms as OHA may require, shall promptly and timely provide to OHA such periodic reports as it may request pertaining to the Work undertaken pursuant to this Order, the costs and obligations incurred or to be incurred in connection herewith, and any other matters covered by this Order.

**23. Order of Provisions; Interpretation.** (a) In the event of a conflict between the Order and these Terms and Conditions, the Order shall prevail. In the event of a conflict between the Order or these Terms and Conditions and any applicable state or local law or regulation, the state or local law or regulation shall prevail.

(b) With respect to the Order, addenda shall govern over other portions of the Purchase Order to the extent specifically noted; subsequent addenda shall govern over prior addenda only to the extent specifically noted.

(c) The Contract may omit modifying words such as “all” and “any,” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The use of the word “including,” when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as “without limitation,” “but not limited to,” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.

**24. Accounting Records.** Service Provider shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Order in accordance with generally accepted accounting principles and practices.

## **PART B. MISCELLANEOUS PROVISIONS**

**1. Successorship.** Service Provider and OHA acknowledge that the provisions of this Contract are binding upon the parties, their employees, agents, heirs, successors and assigns.

**2. Governing Law.** This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. In any action arising out of this Contract, Service Provider consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Alameda County, California

**3. Severability.** If any provision or any part of a provision of this Contract shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable legal requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of this Contract, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

**4. No Waiver.** No waiver of any provision of this Contract shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding unless executed in writing by the party making the waiver. Further, the failure of either Service Provider or OHA to insist, in any one or more instances, on the performance of any of the obligations required by the other under this Contract



shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

**5. Amendments.** This Contract may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

**6. No Attorney Fees.** In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of, any right or obligation pursuant to the Contract or as a result of any alleged breach of any provision of the Contract, each party shall bear its own costs and expenses, including attorney fees, and any judgment or decree rendered in such a proceeding shall not include an award thereof.

**7. Legal Requirements; Permits, Codes and Licenses.** Service Provider agrees to comply with all applicable federal and state laws, regulations and policies, as amended, including those regarding discrimination, unfair labor practices, anti-kick-back, collusion, and the provisions of the Americans with Disability Act (ADA), the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), and all Occupational Safety and Health Administration (OSHA) regulations applicable to the work. Service Provider shall identify, secure and pay for all permits, fees, licenses and approvals necessary for the proper execution and completion of the Work.

## **PART C. CONFIDENTIALITY**

1. Service Provider shall: (a) hold all Confidential Information (defined below) in strict trust and confidence; (b) refrain from using or permitting others to use Confidential Information in any manner or for any purpose not expressly permitted by this Order; and (c) refrain from disclosing or permitting others to disclose any Confidential Information to any third party without obtaining OHA's express prior written consent on a case-by-case basis. Service Provider will disclose Confidential Information only to its employees or contractors who need to know that information in order to perform services hereunder and who have executed a confidentiality agreement with the Service Provider at least as protective as the provisions of this section. The provisions of this section shall survive the termination or expiration of this Order. Service Provider will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Service Provider protects its own confidential or proprietary information of a similar nature, and with no less than the greater of reasonable care and industry- standard care. OHA owns all rights, title and interest in the Confidential Information. Upon OHA's request and upon any termination or expiration of this Order, Service Provider will promptly (i) return to OHA or, if so directed by OHA, destroy all Confidential Information (in every form and medium), and (ii) certify to OHA in writing that Service Provider has fully complied with the foregoing obligations.

2. Service Provider shall also comply with applicable State, Federal and HUD statutes, regulations, policies and procedures governing the gathering, use and protection of Confidential Information and security of system(s) including, but not limited to the federal Privacy Act of 1974 (5 U.S.C. § 552a).

3. "Confidential Information" means: (i) any information related to the business or operations of OHA, including information relating to OHA's personnel and users; and (ii) all financial, statistical, personal, technical and other data and information of OHA (and proprietary information of third parties provided to Service Provider) which is designated confidential or proprietary, or that Service Provider otherwise

knows, or would reasonably be expected to know, is confidential; (iii) Personally Identifiable Information or PII of OHA's clients, users, applicants, participants, tenants and/or landlords, which consists of any information collected, stored and/or disseminated in the performance of this Order that permits the identity of an individual to be directly or indirectly inferred, either alone or in combination with other easily accessible sources, including any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. Examples of PII include, but are not limited to, name; personal identification number, such as social security number (SSN), passport number, driver's license number, taxpayer identification number, or financial account or credit card number; physical or email address information; and personal characteristics, including photographic images (especially of face or other identifying characteristic). Confidential Information does not include information that Service Provider demonstrates to OHA's satisfaction that: (i) Service Provider lawfully knew prior to OHA's first disclosure to Service Provider, (ii) a third party rightfully disclosed to Service Provider free of any confidentiality duties or obligations, or (iii) is, or through no fault of Service Provider has become, generally available to the public.

4. In the event that Service Provider receives a subpoena, public records act request, court order, or other legal document requiring release of Confidential Information or documents, or is informed that such an order is forthcoming, Service Provider will immediately provide written notice to OHA's designated contact person for this Order in order to permit OHA to seek a protective order or other similar order if appropriate.

5. Service Provider shall notify OHA promptly and in writing upon learning of any unauthorized disclosure or use of Confidential Information and will cooperate fully with OHA to protect such information. Service Provider shall further immediately report to OHA any security incidents of which it becomes aware, such as the attempted or successful unauthorized access, use, disclosure, modification, or destruction of Confidential Information in Service Provider's possession or electronic interference with OHA's operations. Service Provider shall make a report to OHA not more than five (5) business days after learning of such use or disclosure, in which it shall identify to the extent known: (i) nature of the unauthorized use or disclosure; (ii) Confidential Information used or disclosed; (iii) who made the unauthorized disclosure or received unauthorized disclosure; (iv) what Service Provider has done to mitigate the negative effects; (v) what corrective action Service Provider has taken or shall take to prevent similar occurrences. OHA will have the right to enforce this Order by specific performance, as well as hold the Service Provider liable for any damages caused by any disclosure of any Confidential Information whether intentional or inadvertent.

#### **PART D. REQUIRED FEDERAL PROVISIONS (FEDERALLY FUNDED CONTRACTS)**

For federally assisted contracts, Service Provider is subject to the federally mandated provisions set forth in this part. As used herein, "contract" refers to this Order.

**1. Procurement of Recovered Materials (Contracts over \$10,000).**<sup>2</sup> (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Service Provider shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with

maintaining a satisfactory level of competition. The Service Provider shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Service Provider determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

(b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Service Provider purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Service Provider: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

**2. Contract Work Hours and Safety Standards Act (Contracts over \$100,000).**<sup>3</sup> If the value of this contract exceeds \$100,000, Service Provider agrees to comply with the labor regulations and standards of the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96), 40 U.S.C. 3701 et seq., and shall include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.

**3. Equal Employment Opportunity Clause.**<sup>4</sup> (a) During the performance of the Contract, the Service Provider agrees as follows:

(1) The Service Provider will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identification or national origin. The Service Provider 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, sexual orientation, gender

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<sup>2</sup> 2 CFR Part 200, Appendix II

<sup>3</sup> 2 CFR Part 200, Appendix II

<sup>4</sup> 41 C.F.R. 60-1.4(a)

identification 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 Service Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The Service Provider will, in all solicitations or advertisements for employees placed by or on behalf of the Service Provider, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identification or national origin.

(3) The Service Provider will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Service Provider's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Service Provider 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 Service Provider will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Service Provider's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Service Provider may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Service Provider will include the provisions of paragraphs (1) through (6) above 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 Service Provider will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Service Provider becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Service Provider may request the United States to enter into such litigation to protect the interests of the United States.

(b) Service Provider and its subcontractors shall include this equal opportunity clause in each of its nonexempt subcontracts.

**4. Limitations on Payments Made to Influence Certain Federal Financial Transactions (Applicable to contracts that exceed \$100,000)<sup>5</sup>**

(a) Service Provider agrees to comply with Section 1352 of Title 31, United States Code (Act) which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Service Provider further agrees to comply with the requirement of the Act to furnish a disclosure (OMB Standard Form LLL, Disclosure of Lobbying Activities) if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

**PART E. HUD ACT OF 1968 SECTION 3 COMPLIANCE REQUIREMENTS**

If the requirements of Section 3 are imposed herein, the regulations set at 24 CFR Part 75 and in OHA's Section 3 Policy and Compliance Plan will apply.

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<sup>5</sup> 2 CFR Appendix II to Part 200