

CONTRACT BETWEEN
THE HOUSING AUTHORITY OF THE COUNTY OF SAN JOAQUIN
AND
COMPANY NAME

INTRODUCTION

This contract by and between the Housing Authority of the County of San Joaquin (hereinafter "HACCSJ") and Company Name (hereinafter "Contractor") is hereby entered into this ___th day of Month 2015.

Unless otherwise detailed herein, all references to "days" shall be calendar days (in the case that the last day referenced falls on a Saturday, Sunday or legal holiday, then the period of time shall be automatically extended to include the next work day). Also, whenever the term "herein" is referred to, such refers to this contract form, the appendices and all listed attachments.

1.0 Services and Payment:

1.1 Scope of Services: The services provided pursuant to this contract generally consist of those services as generally described in Invitation for Bid (IFB) Number XXXX-XXX (hereinafter "IFB") and specifically herein and within the Appendices. Said services shall be provided on the dates and times determined by the HACCSJ at the designated HACCSJ communities and facilities. In addition, the HACCSJ shall retain the right to implement and/or enforce any item issued as a part of the IFB, except where inconsistent with this contract.

1.1.1 The Contractor shall furnish all labor, equipment and services, and perform and complete all (INSERT BRIEF SOW DESCRIPTION) in accordance with this Agreement and the IFB, the Scope of Work / General Specifications Package referenced in this Agreement (as prepared by the HACCSJ), and any duly executed Addenda to this Agreement. Said labor, equipment and services shall be provided on the dates and times determined by the HACCSJ at the designated HACCSJ communities and facilities.

1.1.2 Contractor is responsible for all required permits, safety issues (including securing open areas that may pose hazards), and protection from vandals.

1.1.3 Contractor is responsible for supplying and monitoring all safety equipment, and daily cleanup of work areas.

1.2 Cost/Value of Services:

1.2.1 Labor Costs: The Contractor shall pay not less than the wages required under:

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1.2.1.1 The rates found in the Davis-Bacon Wage Determination “CAXXXXXX MOD TBD”, current as of (DATE) (which was ten (10) days before the closure of the IFB on (DATE), attached herein as an Appendix, and viewable online at:

<http://www.wdol.gov/dba.aspx>

1.2.1.2 The *General Conditions of the Contract for Construction* (form HUD-5370), Clause 46 - Labor Standard, including Amendment No. 1 to this document as included in the IFB.

1.2.2 **Contract Value:** The HACSJ shall pay the Contractor for the performance of the Contract, in current funds, subject to additions and deductions as provided in the Specifications, not to exceed the sum of:

TBD Dollars
(\$000,000.00)

Method and frequency of payment shall be as outlined in the *General Conditions of the Contract for Construction* (form HUD-5370) and the Technical Specifications Section in the IFB. All additional employment classifications to be used in performing the construction work required in this Agreement must be submitted to the HACSJ and HUD Labor Department for rate approval and shall retain the approved rate for the duration of the Agreement.

1.2.3 “Change Orders” and “Contractor Amendments” are disfavored and require substantial evidence, in advance, warranting their approval.

1.3 **Time Performance:** The Contractor hereby agrees to commence work under this Contract on or before a date to be specified in a written “Notice to Proceed” (NTP) letter submitted by HACSJ, and fully complete the project within (NUMBER) (NUMBER) calendar days thereafter, pursuant to Paragraph 25 of the *General Conditions of the Contract for Construction* (form HUD 5370). The Contractor further agrees to pay to the HACSJ, the sum of \$200 per day as fixed, agreed, liquidated damages for each consecutive calendar day of delay until all work is completed and accepted pursuant to Paragraph 33 of the *General Conditions of the Contract for Construction* (form HUD 5370).

1.4 **Payment Schedule/Billing Method:**

1.4.1 To receive payment for services rendered pursuant to this contract the Contractor shall:

1.4.1.1 Comply with Paragraph 27 of the *General Conditions of the Contract for Construction* (form HUD 5370);

1.4.1.2 Submit a fully completed form HUD-51001 “*Periodic Payment*”, showing the value of the work performed during each

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period based upon the approved breakdown of the contract price. The approved breakdown of the contract price is reflected in form HUD-51000 "Schedule of Amounts for Contract Payment" which was previously submitted by the contractor and as approved by HACSJ. Such estimates shall be submitted not later than 5 working days in advance for work previously performed within 30 days of completing the work and are subject to corrections and revisions.

1.4.1.3 Submit all certified payroll reports up to date of the value of work being billed and as detailed in Paragraph 46 of the *General Conditions of the Contract for Construction* (form HUD 5370).

1.4.2 Requests for progress payments must be approved by the HACSJ Contracting Officer and the Executive Director (ED), or designees as appointed by the ED or the HACSJ Board of Commissioners.

1.4.3 Requests for Progress Payments shall be delivered to the attention of:

The Housing Authority of the County of San Joaquin
Attn: Accounts Payable
Post Office Box 447
Stockton, CA 95201

1.4.4 The Contractor shall submit the following forms as required:

- 1.4.4.1 HUD-51002 "Schedule for Change Orders"
- 1.4.4.2 HUD-51003 "Schedule of Materials Stored"
- 1.4.4.3 HUD-51004 "Summary of Materials Stores"

1.4.5 The HACSJ will pay each such properly completed invoice received on a Net/30 basis. Any invoice received not properly completed will not be paid unless and/or until the Contractor complies with the applicable provisions of this contract.

2.0 Contractor's Obligations: Pursuant to this contract, the Contractor agrees to provide the specific construction services detailed in the Agreement herein (including its appendices, the *General Conditions of the Contract for Construction* (form HUD 5370), and the Technical Specifications issued by the HACSJ as included in the IFB. By accepting this contract, Contractor agrees to waive all claims for award of other items listed in the IFB but not awarded to Contractor herein.

2.1 Change Order Requests:

2.1.1 The contractor acknowledges, by signature below, that Change Order Requests will not be summarily approved. All Change Order Requests must be submitted in writing prior to undertaking the additional work, in accordance with *General Conditions of the Contract for Construction*

(form HUD 5370). Change Order Requests can only be approved by the HACSJ Contracting Officer.

2.1.2 The Contractor agrees not to accept or perform any assigned work initiated by a contract amendment or change order without the prior written approval of the HACSJ Contracting Officer and the Executive Director or appointed designee.

2.2 Supervision and Oversight: The Contractor shall be solely responsible for providing supervision and oversight to all of the Contractor's personnel that are assigned to the HACSJ properties pursuant to this contract.

2.3 Qualified Personnel: The Contractor warrants and represents that it will assign only qualified personnel to perform the services outlined herein and within the appendices. For the purposes of this contract, the term "qualified personnel" shall mean those personnel that have been investigated, tested and trained in the manner described within this contract and, as proposed by the Contractor within its proposal or as provided by the Contractor during the Contractor's normal conduct of business.

2.4 Indemnification: The Contractor agrees to fully indemnify, defend and save harmless the HACSJ, including its governing board, attorneys, officers and employees of HACSJ herein collectively referred to as HACSJ, against any and all loss, damage, liability, claim, demand, litigation and expense, including reasonable attorney's fees and litigation costs, resulting from injury or harm to any person, property or deposit arising out of Contractor's business and operations regardless of the active or passive negligence of HACSJ excepting only such damage, injury or harm caused by sole negligence or willful misconduct of HACSJ.

2.5 Insurance Requirements: The contractor shall maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of or failure to perform the work hereunder by the Contractor, its agents, representatives, employees or sub-contractors, at a minimum per the attached Exhibit 1, HARRP General Requirements for Most Contracts. (Indemnification and defense applies only to the extent that such bodily injury or property damage was caused by the negligence of Contractor, or its subordinate, and not to the extent caused by others. These coverage limits may be obtained by individual policies or by combining primary and umbrella policies).

2.5.1 Insurance certificates shall be delivered to:

HACSJ Business Office
Housing Authority of the County of San Joaquin
Post Office Box 447
Stockton, CA 95201

Or delivered in person at: 421 S. El Dorado Street, Suite B, Stockton, CA 95203; or if appropriate, faxed to: (209) 948-6224.

2.6 Licensing: The contractor shall also provide to the HACSJ copies of any required current City, State and/or Federal licenses. Failure to maintain these licenses in a current status during the term(s) of this contract shall constitute a material breach thereof. The contractor agrees to promptly disclose to the HACSJ when it does not possess all requisite licenses to perform the services required by this Contract.

2.7 Financial Viability and Regulatory Compliance:

2.7.1 Contractor warrants and represents that its corporate entity is in good standing with all applicable federal, state and local licensing authorities and that it possesses all requisite licenses to perform the services required by this contract. The Contractor further warrants and represents that it owes no outstanding federal, state or local taxes or business assessments.

2.7.2 The Contractor agrees to promptly disclose to the HACSJ any IRS liens or insurance or licensure suspension or revocation that may adversely affect its capacity to perform the services outlined within this contract. The failure by the Contractor to disclose such issue to the HACSJ in writing within five (5) days of such notification received will constitute a material breach of this contract.

2.7.3 The Contractor further agrees to promptly disclose to the HACSJ any change of its ownership and/or any declaration of bankruptcy that the Contractor may undergo during the term(s) of this contract. The failure of the Contractor to disclose any change of its ownership and/or its declaration of bankruptcy within five (5) days of said actions shall constitute a material breach of this contract.

2.7.4 All disclosures made pursuant to this section of the contract shall be made in writing and submitted to HACSJ within the prescribed time periods.

3.0 HACSJ's Obligations: Pursuant to this contract, the HACSJ agrees to provide the specific services detailed herein and also shall be responsible for the following:

3.1 The HACSJ agrees not to provide any contract amendment or change order assigning and/or deleting work to the Contractor without the prior written approval of the HACSJ Contracting Officer and the Executive Director.

4.0 Assignment of Contract: This contract shall not be assigned or transferred by either party without the written consent of the other party.

5.0 Modification: This contract shall not be modified, revised, amended or extended except by written addendum, executed by both parties. This agreement sets forth the entire agreement of the parties and supersedes all prior agreements, whether written or oral, that exist between the parties regarding the subject matter of this agreement.

6.0 Severability: The invalidity of any provision of this contract, as determined by a court of competent jurisdiction and/or HUD, shall in no way affect the validity of any other provision herein.

7.0 Applicable Laws:

7.1 Compliance with Federal and State Laws: All work performed by the Contractor, pursuant to this contract, shall be done in accordance with applicable all Federal, State and local laws, regulations, codes and ordinances, whether now or hereafter adopted. Contractor shall specifically comply with the Federal Fair Debt Collections Practices Act (15 USC sec. 1692 et seq); the California Consumers Legal Remedies Act (Calif. Civil Code sec.s 1750-1784); the Rosenthal Fair Debt Collections Practices Act (Civil Code sec. 1788 et seq); and California Civil Code sec.s 1812.701 et seq.

7.2 Jurisdiction of Law: The laws of the State of California shall govern the validity, construction and effect of this contract, unless said laws are superseded by, or in conflict with applicable federal laws and/or federal regulations. This contract will be binding upon the parties, their heirs, beneficiaries, and devisees of the parties hereto. The parties agree that San Joaquin County, California is the appropriate forum for any action relating to this contract. Should any party hereto retain counsel for the purpose of initiating litigation or arbitration to enforce, prevent the breach of any provision hereof, or for any other judicial remedy, then the prevailing party shall be entitled to be reimbursed by the losing party for all costs and expenses incurred thereby, including, but not limited to, reasonable attorneys fees and costs incurred by such prevailing party. This contract may be signed in counterparts.

8.0 Notices and Reports:

8.1 All notices, construction schedules, products submittals and/or reports submitted to the HACSJ by the Contractor pursuant to this contract shall be in writing and delivered to the attention of:

Gerald "Chip" Jones
Project Manager
The Housing Authority of the County of San Joaquin
421 S. El Dorado Street, Ste. B
P.O. Box 447
Stockton, CA 95201
PH. 209-460-5042

or delivered in person at the above address, or if appropriate, faxed to: 209-460-5142.

- 8.2 All notices submitted to the Contractor pursuant to this contract shall be in writing and mailed to the attention of:

Person Name
Contracting Company
Address
City, State Zip
PH 000-000-0000

or if appropriate, shall be faxed to: 000-000-0000.

- 9.0 **CFR 85.36(i), Procurement:** Pursuant to this CFR, as now or hereafter issued by HUD, the HACSJ and the Contractor each agree to comply with the following provisions and agree that any contract that ensues as a result of this IFB will include the following clauses, whether actually inserted or by reference:

- 9.1 **Remedies for Contractor Breach:** Pertaining to contract-related issues, it is the responsibility of both the HACSJ and the Contractor to communicate with each other clearly and thoroughly. Each party is responsible for communicating dissatisfaction of any issues surrounding the contract. Dissatisfaction by either party should be communicated in writing, fully detailing the issue and requested corrective action (the HACSJ has the right to issue unilateral addendums to this contract; the Contractor does not have this right). Within ten (10) days the party receiving the written notice of dissatisfaction shall respond in writing to the other party. However, If HACSJ is the dissatisfied party; it may request the Contractor to respond in less than ten (10) days.

9.1.1 Procedures regarding Contractor performance issues: If the Contractor is in material breach of the contract, the HACSJ may promptly invoke the termination clause, pursuant to Paragraph 34 of the *General Conditions of the Contract for Construction* (HUD form 5370), as included with the bid package and attached hereto as an appendix.

9.1.2 Prior to termination, the HACSJ may choose to warn the Contractor, verbally or in writing, of any issue of non-compliant or unsatisfactory performance. Such written warning may include placing the Contractor on probation, thereby giving the Contractor a certain period of time to correct the deficiencies or potentially suffer termination. The HACSJ shall maintain in the contract file a written record of any such warning detailing all pertinent information. If the Contractor does not agree with such action, the Contractor shall have ten (10) days to dispute or protest, in writing, such action; if he/she does not do so within the ten (10) day period, he/she shall have no recourse but to accept and agree with the HACSJ's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the HACSJ's alleged incorrect action(s).

- 9.1.3 After termination, if the Contractor does not agree with the HACSJ's justification for the termination, the Contractor shall have ten (10) days to dispute, in writing, such action; if he/she does not do so within the ten (10) day period, he/she shall have no recourse but to accept and agree with the HACSJ's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the HACSJ's alleged incorrect action(s).
- 9.1.4 All rights and remedies granted to HACSJ herein and any other rights and remedies which HACSJ may have at law and in equity are hereby declared to be cumulative and not exclusive. The fact that the HACSJ may have exercised any remedy without terminating this contract shall not impair HACSJ's rights thereafter to terminate or to exercise any other remedy herein granted, or to which HACSJ may be otherwise entitled.
- 9.2 **Termination for Convenience:** As detailed within Paragraph 34 of the *General Conditions of the Contract for Construction* (form HUD 5370), as included with the bid package and attached hereto as an Appendix. The HACSJ may, at its sole discretion, and to advance completion of the/this contract, partially terminates all or a portion of this contract to advance completion of this contract either through the assignment to itself or other third party contractor(s) and thereby reducing the cost and overall contract price on a pro-rata basis in the sole discretion of Contracting Officer for HACSJ. As described within HUD Procurement Handbook 7460.8 REV 2, contracts may be terminated for convenience when the Housing Authority no longer needs or desires the supplies or services under contract or can no longer fund the procurement. This Contract is contingent on the availability of funds and is pending approval of demolition/disposition applications by and from HUD and future HUD approval that is or may become required.
- 9.3 **Executive Order 11246:** For all construction contracts awarded in excess of \$10,000, both parties hereby agree to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor Regulations (41 CFR Chapter 60).
- 9.4 **Copeland "Anti-Kickback" Act:** For all construction or repair contracts awarded, both parties hereby agree to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).
- 9.5 **Davis-Bacon-Act:** For all construction contracts awarded in excess of \$2,000 when required by Federal Grant Program legislation, both parties hereby agree to comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented in Department of Labor Regulations (29 CFR Part 5).

- 9.6 Sections 103 and 107 of the Contract Work Hours and Safety Standards Act:** For all construction contracts awarded in excess of \$2,000 and for other contracts, which involve the employment of mechanics or laborers awarded in excess of \$2,500, both parties hereby agree to comply with the Sections 103 and 107 of the Contract Work Hours and Safety Act (40 U.S.C. 327-330) as supplemented in Department of Labor Regulations (29 CFR Part 5).
- 9.7 Reporting:** Both parties hereby agree to comply with any reporting requirements that may be detailed herein.
- 9.8 Access to Records:** Both parties hereby agree that the Contractor will make available to the HACSJ, HUD, the Comptroller General of the United States, or any of their duly authorized representatives (including retained auditors), any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcriptions.
- 9.9 Record Retention:** The Contractor further agrees that he/she shall retain all such records pertaining to this contract for a period of not less than three (3) years after final payment, the completion of any services provided pursuant to this contract, or after all pending matters are closed. Such records shall include electronic data which includes email, voicemail and "writings" as defined in California Evidence Code, Section 250.
- 9.10 Clean Air Act:** For all contracts in excess of \$100,000, both parties hereby agree to comply 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).
- 9.11 Energy Policy and Conservation Act:** Both parties hereby agree to comply with all 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).
- 9.12 Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968:** Contractor shall, to the greatest extent feasible, provide opportunities for training and employment for lower income residents of the development area and to award subcontracts for work in connection with the project to business concerns which are located in, or owned in substantial part by persons residing the area of development, as described in 24 CFR 135.

10.0 Contract Documents & Attachments

- 10.1** The versions of the following documents, current at the time of contract signing, are part of this Contract in accordance with Federal law:

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- 10.1.1 Appendix No. 1: Form HUD-5370, *General Conditions of the Contract for Construction, Public Housing Programs* and any amendments thereto;
- 10.1.2 Appendix No. 2: HACSJ Scope of Work for the project, as included in the IFB, and any Addendums issued thereto.
- 10.1.3 Appendix No. 3: General Insurance Requirements for Contractors
- 10.1.4 Appendix No. 4: Davis-Bacon Wage Determination “CAXXXXXX MOD TBD”
- 10.1.5 Appendix No. 5: Form HUD-51001, *Periodic Estimate of Partial Payment*;
- 10.1.6 Appendix No. 6: Form HUD-51002, *Schedule of Change Orders*;
- 10.1.7 Appendix No. 7: Form HUD-51003 “*Schedule of Materials Stored*”;
- 10.1.8 Appendix No. 8: Form HUD-51004 “*Summary of Materials Stored*”;
- 10.2 In case of any discrepancy between this contract and any of the above noted documents, the requirement(s) listed within the body of this contract shall first take precedence, then the requirement(s) listed within each Appendix shall take precedence in the order they are listed above.
- 10.3 Any document referenced herein that has not been attached is contained herein by reference, and a copy of each such document will be delivered by the HACSJ to the Contractor within ten (10) days upon receipt of a written request for such.

11.0 CERTIFICATIONS: The undersigned representatives of each party acknowledge by signature below that they have reviewed the foregoing and understand their respective obligations as defined herein:

HOUSING AUTHORITY OF THE COUNTY OF SAN JOAQUIN (as to form and procurement compliance):

By: _____ Date: _____
Brad Diemer
Procurement Compliance Officer

HOUSING AUTHORITY OF THE COUNTY OF SAN JOAQUIN:

By: _____ Date: _____
Barbara S. Kauss
Executive Director

COMPANY NAME:

By: _____ Date: _____
Person Name
Title

